(1) 95-843

No. _____

Supreme Court, U.S.
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In The
Supreme Court Of The United States

OCTOBER TERM, 1995

GERALD D. BUSH,
Petitioner,

v.

MICHAEL Z. JONES,
KENNETH HARPER,
ZEELAND PUBLIC SCHOOLS
Respondents

PETITION FOR A WRIT OF CERTIORARI
TO THE MICHIGAN COURT OF APPEALS

PETITION FOR A WRIT OF CERTIORARI

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Thanksgiving Day
November 23, 1995

QUESTIONS

Questions concerning appeals by right to the Michigan Court of Appeals.

1. UNDER "DUE PROCESS," CAN A COURT OF REVIEW ALLEGE AN APPEAL BY RIGHT IS UNTIMELY WITHOUT ANY "COMPETENT, MATERIAL AND SUBSTANTIAL EVIDENCE" (MICHIGAN CONST. VI, SEC 28) IN SUPPORT AND THEREBY DISMISS LAWFUL JURISDICTION WITHOUT A HEARING, ARGUMENTS OR A DECISION ON THE MERITS? OR ARE THE PEOPLE TO SPECULATE ABOUT THE COURT'S INVISIBLE "EVIDENCE" AND ITS RESULTANT "JUSTICE."

2. DOES "DUE PROCESS" AND "EQUAL PROTECTION" ASSURE THE PEOPLE'S RIGHT TO TIMELY MAIL FILINGS TO THE COURT AND HAVE THEM BE CONSIDERED TIMELY FILED?

3. IS "DUE PROCESS" VIOLATED WHEN THE TIME TO APPEAL OR TAKE OTHER ACTION AFTER A DECISION BY A STATE COURT IS SO SHORT THAT IT IS OFTEN DIFFICULT, IF NOT IMPOSSIBLE, TO MEET BY PRO SE LITIGANTS?

Questions concerning the trial court.

4. IS THE PEOPLE'S 7TH AMENDMENT RIGHT TO A JURY TRIAL VIOLATED WHEN THE COURT DISMISSES A CASE BY SUMMARY DISPOSITION, ALLEGEDLY BECAUSE OF THE EXPIRATION OF THE STATUTE OF LIMITATIONS, BUT THE COURT FAILED OR REFUSED TO: (A.) APPLY ANY STANDARD OF REVIEW, (B.) CONSIDER FRAUD, SUBTERFUGE AND SECRECY ALLEGATIONS AS FACT, (C.) CONSIDER WHETHER THE FACTS FAVORED NON-MOVING PARTY AND SUMMARY JUDGMENT COULD BE GRANTED IN NON-MOVING PARTIES FAVOR?

5. ARE THE "DUE PROCESS" RIGHTS OF THE LOSER (PETITIONER) IN A SUMMARY DISPOSITION MOTION VIOLATED WHEN THE COURT CLERK ONLY NOTIFIES THE WINNER, BUT NOT THE LOSER, OF THE DATE OF SIGNING OF ORDER, WHEN LOSER IS THE ONE WHO MUST APPEAL OR TAKE OTHER POSTJUDGMENT PRESERVATIVE ACTION WITHIN THE TIME LIMITS?

6. IS "DUE PROCESS" VIOLATED WHEN NOTICE FROM THE CIRCUIT COURT CLERK TO LOSER (PETITIONER) IS SUBSTANTIALLY DELAYED OR NEVER PROVIDED, WHILE THE TIME LIMITATION FOR APPEAL OR REHEARING IS RUNNING UNBEKNOWN TO LOSER?

7. IS "DUE PROCESS" VIOLATED BY DELIBERATELY MISLEADING LEGAL ARGUMENTS BY OPPOSING COUNCIL LEADING THE COURT TO BELIEVE THE TIME TO MOVE FOR REHEARING-NEW TRIAL WAS ONLY 14 DAYS, INSTEAD OF 21 DAYS AS IS TRUE OF "POST JUDGMENT" DECISIONS ACCORDING TO THE MICHIGAN COURT RULES, WHEN THE OPPOSING PARTY IS A PRO SE LITIGANT?

Questions cerning pro se rights

8. ARE THE CONSTITUTIONAL PROTECTIONS OF "DUE PROCESS" AND "EQUAL PROTECTION" DENIED PRO SE LITIGANTS WHEN THEY HAVE THE RIGHT TO REPRESENT THEMSELVES AND DO SO, BUT FIND PREJUDICE INSTEAD OF FAIRNESS AND INJUSTICE INSTEAD OF JUSTICE IN EVERY TRIBUNAL WHEN THEY DO REPRESENT THEMSELVES?

TABLE OF CONTENTS

PAGES

QUESTIONS i

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES vi

PETITION OF WRIT OF CERTIORARI 1

OPINIONS BELOW 1

JURISDICTION 2

CONSTITUTIONAL PROVISIONS 2–3

STATEMENT OF THE CASE 3

Introduction 3

The Contract 3

Petitioner's First Teacher Tenure Case 4

The Contract Case At The Trial Court 5

The Michigan Court of Appeals And Other Appeals 8

REASONS FOR GRANTING THE WRIT 9

1. THE QUESTIONS PRESENTED SHOULD BE CONSIDERED BY THIS COURTBECAUSE THE DUE PROCESS RIGHTS OF PETITIONER, AND LIKELY OTHERS IN THE STATE OF MICHIGAN, ARE BEING REPEATEDLYVIOLATED BY THE MICHIGAN COURT OF APPEAL'S DISMISSAL OF APPEALS BY RIGHT WITHOUT THE REQUIRED DUE PROCESS OF A HEARING, ARGUMENTS AND DECISION ON THE MERITS. THEIR ALLEGATIONS OF UNTIMELINESS AND LACK OF

JURISDICTION ARE COMPLETELY FALSE &/OR ERRONEOUS AND CONTAIN NO SUPPORTING FACTUAL EVIDENCE WHATSOEVER. 9
A. The Law 10
B. The Relevant Facts 10
C. Legal Argument 11

2. THIS CASE SHOULD BE CONSIDERED BY THIS COURT BECAUSE DUE PROCESS WAS DENIED PETITIONER WHEN HIS TIMELY MAILED MOTION FOR REHEARING WAS REJECTED AND RETURNED BY THE COURT CLERK5 15
A. U.S. Supreme Court Rule 17
B. Michigan Court Rule 17
C. Michigan Precedents 17

3. THE COURT SHOULD HEAR THIS CASE BECAUSE OF THE MULTIPLEVIOLATIONS OF DUE PROCESS AT THE TRIAL COURT. 19
A. Judgment Inconsistent With The Facts And Law. 20
B. Fair and Impartial Judge? 22
C. Misleading Opposing Counsel? 23
D. Do Late Or Absent Notices By The Clerk Violate Due Process? 23

4. THE COURT SHOULD HEAR THIS CASE BECAUSE PETITIONER HAS BEEN UNJUSTLY DENIED HIS RIGHT TO A JURY TRIAL. 25

5. THE COURT SHOULD HEAR THIS CASE BECAUSE IT CLEARLY .DEMONSTRATES THE VAST EXTENT OF THE VIOLATIONS OF THE CONSTITUTIONAL RIGHT TO JUSTICE WHEN ONE REPRESENT ONESELF IN A COURT OF LAW AND DEMONSTRATES IN PART REASONS WHY THE PEOPLE HAVE LOST FAITH IN THE GOVERNMENT. 26

CONCLUSION 29

APPENDIX

A. The Opinion of the Ottawa County Circuit Court (trial court). of December 9, 1993 and clerk's Notice of same date.
B. The Order of the Ottawa County Circuit Court of December 22, 1993.
C. The Clerks Notice of the signing of the above Order dated .. December 30, 1993.
D. Petitioner's letter to the Ottawa C. Circuit Court Judge . Nykamp noting delay in receiving clerk's notice and requesting extension of time dated January 5, 1994.
E. Letter from the Ottawa County Circuit Judge dated January . 20, 1994.
F. Respondent's attorney March's letter to Judge Nykamp of. January 25, 1994.
G. The Opinion of the Ottawa County Circuit Court denying Petitioner's Motion for Rehearing - New Trial dated February24, 1994 and clerk's Notice of same date.
H. The related Order dated March 21, 1994 and filed March 22, 1994. (NO CLERK'S NOTICE SENT.)
I. The Opinion of the Michigan Court of Appeals dismissing Petitioner's appeal by right dated August 8, 1994.
J. Letter of the Clerk of the Michigan Court of Appeals ... rejecting Petitioner's timely mailed Motion for Rehearingdated September 13, 1994.
K. The Michigan Supreme Court Order denying Application forDelayed Leave to Appeal and Superintending Control dated March 31, 1995.
L. The Michigan Supreme Court's Order denying Petitioner's . Motion for Rehearing dated June 30, 1995.

TABLE OF AUTHORITIES

Michigan Court Rules (MCR)

MCR 2.107 17
MCR 2.108 6
MCR 2.116 5
MCR 2.119 ..... 6, 7
MCR 2.600 ..... 6, 7
MCR 2.602 24
MCR 2.611 ..... 6, 7
MCR 7.203 10
MCR 7.204 ..... 7, 8, 10. 23
MCR 7.215 ..... 7, 8, 16
MCR 7.302 7
MCR 7.313 7

Michigan Statutes

MCL 38.71 et seq 3, 4
MCL 38.101; MSA 15.2001 3

US Supreme Court Cases

Atchison, T & S F R Co. v United States, 284 US 248, 76 L Ed 280 (1931) 8, 13, 19

Bell v Burson, 402 US 535, 29 L Ed 90, 91 S Ct 1586 12

Board of Regents v Roth, 408 US 564, 33 L Ed 2d 548, 92 S Ct 2701 (1972) 3, 20, 21

Bush v Zeeland Public School, US Supreme Court #92-1167, cert denied. 3, 4, 5

Cleveland Bd. of Educ. v Loudermill, Parma Bd. of Educ. v Donnelly, 470 US 532, 84 L Ed 2nd 494, 508, 510, 105 S Ct 1487 (1983) 4, 20, 25, 29

Evitts v Lucey, 469 US 387, 83 L Ed 2d 821, 105 S Ct 830 (1984-85) 11, 15

Faretta v California, 422 US 806, 831, 45 L Ed2d 562, 95 S Ct 2525 (1975) 27. 28

Forrester v White, 484 US 219, 98 L Ed 2d 555, 108 S Ct 538 (1988) 27

Goldberg v Kelly, 397 US 254, 25 L Ed 2d 287, 90 S Ct 1011, (1970) 11, 12, 13

Griffin v Illinois, 351 US __, 17,
100 L Ed 2d 811, 76 S Ct 585, 55 ALR2d 1055 ( ) 15
In re Murchison, 349 US 133;
99 L ed 942; 75 S Ct 623 (1955) 5
Joint Anti-Fascist Comm v McGrath, 341 US 123,
95 L Ed 817, 71 S Ct 624 (1951) 12
Pernell v Southhall Realty, 416 US 363, 40 L Ed 2d 198, 203,
94 S Ct 1723 (1974) 26
Poe v Ullman, 367 US 497, 6 L ed 2d 989, 1019,
81 S Ct 1752 (1961) 29
Simler v Conner, 372 US 221, 9 L ed 2d 691,
83 S Ct 609, (1963) 25
Stump v Sparkman, 435 US 349, 55 L Ed 2d 331,
98 S Ct 1099, Reh den (1978) 27

CONSTITUTIONAL PROVISIONS

United States Constitution, Amendment I 2, 16, 23, 30
United States Constitution, Amendment VII 2, 25, 26, 30
United States Constitution, Amendment IX 2, 26, 30
United States Constitution, Amendment XIV...
...3, 9, 13, 15, 26, 30

Michigan Constitution

Article 6, Section 6 10

Michigan Cases and Other Cases

Allen v Conklin, 112 Michigan Reports 74 (1897) 22
Bay City School District v Bay City Education
Ass'n, Inc., 425 Mich 426, 430; (1986) 5
Biafore v Baker, 119 Mich App 667, (1982) 16, 17
Breuhan v Plymouth-Canton Community Schools, 137 Mich. App.
813, 815; 359 NW2d 566 (1984), lv gtd 422 Mich 934 (1985),
rev. on other grounds. 10
Bush v Zeeland Public School, 439 Mich 985,
483 NW2d 876, US Supreme Court #92-1167
cert denied. 3, 4, 6
Carpenter v Mumby, 86 Mich App 739, 751, (1978) 24
Crampton v Dept of State, 395 Mich 347 (1975) 22, 25

Kuenzer v Osborn (1970) 180 NW2d 298, 24 Mich App 170, affirmed 189 NW2d 207, 385 Mich 517. 17
Lothian v Detroit, 414 Mich 160, 177-178 (1982) 22
Planned Parenthood, Sioux Falls Clinic v Miller, 860 F. Supp 1409 (W.D. Mich 1994) 10
Shiffer v Gibralter Schools, 393 Mich 190, 212-213; _____ NW2d 255, (1974) 3
Tomkins v Hollister & The First National Bank of Grand Rapids, 60 Mich 470, 27 NW 651 (1886) 21, 22
US v Rockland Trust Co., 860 F Supp 895, p 905 (1994) 20. 21

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PETITION FOR A WRIT OF CERTIORARI
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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the dismissal of Petitioner's appeal by right to the Michigan Court of Appeals and subsequent refusal to docket motion for rehearing and matters at the trial court.

OPINIONS BELOW

The Opinion of the Ottawa County Circuit Court (trial court) of December 9, 1993 and clerk's Notice - Appendix A. The Order of the Ottawa County Circuit Court of December 22, 1993 - Appendix B. The Clerks Notice of the signing of the above Order dated December 30, 1993 - Appendix C. Petitioner's letter to the Ottawa C. Circuit Court Judge Nykamp noting delay in receiving clerk's notice and requesting extension of time dated January 5, 1994 - Appendix D. Letter from the Ottawa County Circuit Judge dated January 20, 1994 - Appendix E. Respondent's attorney March's letter to Judge Nykamp of January 25, 1994 - Appendix F. Respondent's attorney March's letter to Judge Nykamp of January 25, 1994. The Opinion of the Ottawa County Circuit Court deny-

ing Petitioner's Motion for Rehearing - New Trial dated February 21, 1994 and clerk's Notice - Appendix G. The related Order dated March 21, 1994 and filed March 22, 1994 (NO CLERK'S NOTICE SENT of signing of order) - Appendix H. The Opinion of the Michigan Court of Appeals dismissing Petitioner's appeal by right dated August 8, 1994 - Appendix I. Letter of the Clerk of the Michigan Court of Appeals rejecting Petitioner's timely mailed Motion for Rehearing dated September 13, 1994 - Appendix J. The Michigan Supreme Court Order denying Application for Delayed Leave to Appeal and Superintending Control dated March 31, 1995 - Appendix K. The Michigan Supreme Court's Order denying Petitioner's Motion for Rehearing dated June 30, 1995 - Appendix L.

JURISDICTION

This writ seeks review of a civil case where the Michigan Court of Appeals Decision and Order dismissed Petitioner's appeal by right before the briefs were filed and before the appeal could be heard on the merits in an opinion dated August 8, 1994 and their Clerk's subsequent refusal to accept Petitioner's timely mailed motion for rehearing. Extension of time to file this writ granted to November 27, 1995 (Number A-269).

This case seeks review, if the Court should see fit, of issues involved in the Ottawa County Circuit Court decisions and procedures, since the appeal by right was dismissed.

Jurisdiction for review of this matter by certiorari is conferred on this Court by 28 USCS 1257 and Rule 10.1(c).

CONSTITUTIONAL PROVISIONS

United States Constitution, Amendment I

Congress shall make no law . . . abridging the freedom of speech, or of the press, . .

United States Constitution, Amendment VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

United States Constitution, Amendment IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the People. (Specifically: the right to work, right to self representation, right to fair adjudication.)

United States Constitution, Amendment XIV

[N]or shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Introduction

The facts in this case have for the most part been established as a public record in other forums and are not in dispute. . .owever, being this is a summary disposition case, the allegations of the compliant must be considered true as well.

In a nut shell, Mr. Bush has been a property right employee (See **Board of Regents v Roth**, 408 US 564, 576-578, 33 L Ed 2d 548, 92 S Ct 2701 (1972) of Defendant Zeeland Public Schools (ZPS) since 1969. Michigan Teacher Tenure Law gives teachers specific rights. MCL 38.71 et seq. Primarily it protects teachers from dismissal unless there is reasonable or just cause. MCL 38.101. The intent of the law is to protect education by protecting teachers employment rights. See **Shiffer v Gibralter Schools**, 393 Mich 190, 212-213; ___NW2d 255, (1974)

However, Appellant's property right employment has been unjustly interrupted by periods of unjust layoff's of about 5 years. Petitioner was laid off in 1981 and 1984. Much later in time it was described as "subterfuge" by the Michigan Teacher Tenure Commission (TC # 87-30, USSC #92-1167). The layoffs were done in total disregard of Petitioner's rights by law and under specific contracts with Defendant Zeeland PS.

The present suit seeks justice involving the broken individual contracts, union contract, and total disregard for an arbitrators order of reinstatement of Petitioner to his teaching job.

The Contract

A little background of the contract. The contract resulted from and after an arbitrators award of reinstatement based on Respondent's violation of the recall provisions of the bargained contract for 1982-83, when ZPS refused to recall Petitioner to his incumbent position. After the arbitration order of reinstatement, Petitioner was offered a buyout if he would resign. However, Petitioner was not of a mind to give up his chosen profession so early in his career and at such a young age. Respondent ZPS to wanted to keep the newly hired replacement teacher for Bush, a Mr. Coe, in Bush's incumbent teaching position for a third year, the 1983-84 school year, since they admittedly preferred Mr. Coe over Bush.

Therefore a contract was proposed and agreed to. One provision of the individual contract, allowed Respondent ZPS to keep the newly hired replacement teacher for Bush, a Mr. Coe, in Bush's incumbent teaching position for a third year, the 1983-84 school year. The primary reason was Bush did not want to face the on the job harassment threatened by Defendant Harper, if he returned to teaching. Another provision of the contract provided that Bush would take a Sabbatical leave of absence (Bush coerced into this by the threats of harassment should he immediately return to teaching.) Another provision allowed Bush time to consider and decide whether or not to accept the buyout provision of one years salary and benefits in cash and resign or chose to return to teaching for 1984-85 school year in his incumbent position held since 1969.

When the time came near the end of the 83-84 school year, Plaintiff chose to go back to teaching. However, Defendants then deliberately concocted a (2nd) situation where Plaintiff was laid off a second time, again allegedly because of a decline in student enrollment. Petitioner had no chance to "confront witnesses" or view or discover "erroneous records or false accusations." **Cleveland Bd. of Educ. v Loudermill, Parma Bd. of Educ. v Donnelly**, 470 US 532, 84 L Ed 2nd 494, 508, 510, 105 S Ct 1487 (1983) The contract did not address the layoff issue. But the layoff resulted in Bush receiving neither the cash or his job back. Instead Bush was the only teacher laid off of some 50 high school teachers and of about 140-150 total teachers.

Petitioner's First Teacher Tenure Case

In 1987, a Teacher Tenure Case was filed by an attorney with the Michigan Teacher Tenure Commission alleging violation of the Tenure Law. MCL 38.71 et seq. A hearing was held in 1988. (Teacher Tenure Case #87-30, US Supreme Court #92-1167) (Petitioner has since had to file other teacher tenure cases pro se.)

The Tenure Commission Decision 4/1 in favor of Bush held that he was laid off under the guise of "subterfuge" and never should have been laid off in 1981 and provided that all losses be recouped. On appeal by Zeeland Public Schools and cross appeal by Petitioner, the Ottawa County Circuit Court reversed. The case was reversed primarily because Appellant's attorney abandoned him right after the win and left him to represent himself, due to a conflict of interest.

Petitioner, pro se for the most part, appealed the Tenure matter through the appeal process without ever gaining a review of the circuit court's reversal decision. (Michigan Court of Appeals, #138192, Michigan Supreme Court, 439 Mich 985, 483 NW2d 876, US Supreme Court #92-1167, cert denied.) If Petitioner had won, the damages would have

likely exceeded the damages of this case and covered them and this case would not have been necessary.

The Contract Case At The Trial Court

After the Tenure Case was lost on appeal and no leave was granted, Petitioner soon thereafter filed (in 1993) the present suit requesting a jury trial and damages for the written contract that was violated by his second layoff (1984). As in the first layoff, Petitioner did not believe there was reasonable or just cause for the layoff. Petitioner contended there was more "subterfuge."

Michigan law properly allows an action for relief under a contract separate from other relief allowed by law. **Bay City School District v Bay City Education Ass'n, Inc.**, 425 Mich 426, 430; (1986)

Before discovery could take place, Defendants filed a motion for summary disposition based allegedly on the statute of limitations having expired under MCR 2.116 (C)(7). Petitioner contended oppositely by brief that summary disposition should be granted in his favor as allowed by MCR 2.116 (I)(2).

Bush contended that the Defendants continuing fraudulent allegations that ". student enrollment . . again dramatically dropped . " for 1983-84 were not bore out by the facts. (Def. Brief in Support of Summary Disposition. p 4) Instead Petitioner provided the facts that revealed there was not any significant decline in enrollment and layoff was unnecessary. (Plaintiff's Brief in Opposition to Summ. Dispo. p 29-33) Therefore summary judgment should have been granted in Petitioner's favor, had the Court been a "fair" trier of facts. Instead the judge refused to look at the evidence.

> "A fair trial in a fair tribunal is a basic requirement of due process." **In Re Murchison**, 349 US 133, 136, 75 S Ct 623, 625 (1955).

But in addition to ignoring the facts, the judge ignored the law and the principle of stare decisis. Bush had also alleged there was "fraud" involved in Defendant's actions for hiding the enrollment truth and maintaining falsely that there was a major decline since 1984, which would overcome the statute of limitations defense. (Plaintiff's Brief in Opposition, p 15-22 & Affidavit #10) Respondent's continue to maintain this deception is fact to the present time.

Is summary disposition warranted? There was no standard of review applied. Further, it is Petitioner's opinion that no statute of limitations begins to run until the players are on an even playing field. Since

Respondent's still maintain the layoff was legitimate, even though it was fraudulent, they have forfeited any statute of limitation defense.

The trial court in granting the motion for summary disposition never mentions the decision is on the motion and applied no standard of review. (App A)

Apparently it is the trial court's opinion that, regardless of fraudulent dealings by the government with its employees and regardless of the employees good faith contracts with the government, the statute of limitations runs on anyway and the government may screw you if it choses to and the statute of limitations will protect it. The trial court ruled in an opinion dated December 9, 1993, the statute of limitations barred the case. (App A)

On December 22, 1993 an Order was signed by other than the presiding judge. (App B) The appeal period of time had already started by the signing of the Order. Notice of the signing of that order was not sent by the court clerk until December 30, 1993. (App C) By the time the notice was sent to Petitioner that the order had been signed, much of Petitioner's time to appeal had already expired. (App C) Plus, as you will see later, there was a controversy over how much time is allowed for rehearing or appeal. Petitioner was immediately put at a distinct disadvantage.

Because of the unjust delay in receiving notice, Petitioner wrote a letter to the judge in early January, 1994, requesting an extension of time to about January 20, 1994 to file for appeal or rehearing. (App D) Then within 21 days of the date of the clerk's notice, Petitioner, on January 20, 1994, sent his Motion for Rehearing-New Trial by mail to the court. Apparently on the same day the judge had written a one line letter back stating extensions of time were only granted by motion. (App E) However, MCR 2.108 (E) allows extension of time without motion. Even before the judge's letter was sent, Petitioner's Motion for Rehearing-New Trial had been sent and filed. The judge's letter was received on about January 25, 1994.

Respondents attorney March sent a letter stating the rule under which Petitioner had filed for rehearing-new trial was wrong and stating it should have been under a rule for rehearing allowing less time. (App F) Petitioner contends this attorney engaged in misconduct, as has happened before with this same attorney, by intentionally and convincingly misleading the court with the letter. (See US Supreme Court #92-1167, Reply Brief, p 2-5 for <u>some</u> of his other misconduct.)

There are some definite differences in the Court Rules. Petitioner's claimed rule, MCR 2.611, is in Subchapter 2.600 <u>Judgments and Orders; Postjudgment Proceedings</u>. Mr. March's rule, MCR 2.119(F) is titled

Motion Practice in the General Provisions section. There is no rehearing or reconsideration in the Postjudgment section, MCR 2.600. As the court mentions, the time is 21 days under MCR 2.611(B), but under 2.119(F) the time was only 14 days. (App G)

The judge wrongly adopted the Respondent's misleading argument. The trial court ruled the motion was one for rehearing, not new trial, and then erred again ruling the motion was late. (App G) The trial court stated:

> "because there has been no trial in this case, this court will treat plaintiff's motion as a motion for rehearing or reconsideration." (emphasis added) (App G, p)

Petitioner would add that there was no fair trial, but would leave open the question of whether or not there was a "trial" for consideration by the Supreme Court. For sure there was a final judgment and it fit then into the Postjudgment section of the MCR.

Petitioner obviously wanted a motion for rehearing or reconsideration in addition to a new trial, but the "rehearing" option was not available in the Postjudgment section of the court rules. The court's conclusion that "plaintiff's motion is untimely" is at least questionable in light of the delayed notice, plus there is no sign of bad faith deliberate delay by Petitioner. Therefore the case should have been reviewable by the Court of Appeals. (App G)

Due process is involved here in that, as seen above, from the signing of the order to the time of notice of the signing of the order is at least 8 days, not counting mailing time. Since the judge ruled the 14 days apply, the time for rehearing is more than 50% gone before Petitioner even received any notice of the fact the appeal time was running. (Had petitioner appealed by right instead, he would have had 21 days. MCR 7.204 (A)(1) If nothing worse, the rules are vague. Due process depends on clarity and fairness and they were missing.

The Court should note that other MCR's provide an equal time for rehearing/reconsideration and appeal when at the Michigan Court of Appeals MCR 7.204(A) & 7.215(H) and Michigan Supreme Court MCR 7.302(A) & 7.313(D)(E)]. While the time is a meager 21 days, it is at least equal and not so vague and confusing.

In the Petitioner's rehearing-new trial motion decision, the trial court again dismisses "fraudulent concealment of material facts" as a defense to the statute of limitations. (App G) The court refused to consider Petitioner's contention (1) that the it erred by failing to use a standard of review for summary disposition, (2) equity barred the statute of limitations defense, (3) the court erred by wrongly concluding that no

authority was provided to toll the statute of limitations, (try logic & other tribunals) (4) the statute of limitations should be tolled when other litigation is pending (in order to conserve judicial resources & make it tolerably manageable for pro se litigants, who sacrifice much, to pursue their legal rights).

Under the precedent set in **Atchison, T & S F R Co. v United States**, 284 US 248, 259-260, 76 L Ed 280 (1931) ample grounds were established for granting rehearing or new trial.

The trial court made its decision on the February 24, 1994. (App G) An Order was signed on March 21, 1994 and stamped filed on March 22, 1994. (App H) Mysteriously, no Notice was ever sent to the Plaintiff (losing party) by the court clerk of the signing of the order, which began the time clock for appeals. (Confirmed by docket entries and computer printout of the case.)

The Michigan Court of Appeals And Other Appeals.

Petitioner timely filed his claim of appeal by right on April 11, 1994 with the Michigan Court of Appeals.

The Michigan Court of Appeals dismissed the appeal by right on August 8, 1994 claiming "that the claim of appeal is dismissed for lack of jurisdiction because it was not timely filed." (emphasis added) (App I) But the Court of Appeals provided no facts to support its findings or judgment. Further, since there are no supporting facts and the decision is erroneous, the decision is manifest injustice to Petitioner.

Michigan Court Rules (MCR) allow 21 days to file a claim of appeal by right to the Court of Appeals. (MCR 7.204) Bush's claim was clearly filed within that time.

Ater the dismissal, Petitioner sought rehearing in a motion mailed on August 29, 1994.

The Court of Appeals returned the motion with a letter stating "Your motion was not received in this office within 21 days of the date this Court's decision was issued as required by MCR 7.215(H)." (App J)

Apparently one is not allowed to mail filings to Michigan Courts on the last day. Apparently they must be hand delivered. But no court rule or other authority on procedure states that. Furthermore, such a rule violates equal protection and is prejudicial against those who live a great distance from the court house or have other handicaps that prevent hand delivery.

Michigan has no provision for appeal to a Judge of the Court of Appeals (or any other judge) when such a decision is made by the Clerk, such as the US Supreme Court has in Rule #29 (2).

Petitioner then after receiving the letter from the Michigan Court

of Appeals Clerk on about September 15, 1994 had to make an application for Delayed Leave to Appeal to the Michigan Supreme Court within a couple of weeks. They denied leave to appeal on March 31, 1995. (App K) Petitioner made a timely motion for reconsideration and it was denied on June 30, 1995. (App L)

Petitioner sent a motion to the US Supreme Court for extension of time until about November 27, 1995. Petitioner has confirmed by phone that the extension was granted.

REASONS FOR GRANTING THE WRIT

The Court should grant the writ because of the number of violations of Constitutional rights evident in this case, all of which Petitioner probably will not even be able to address, and the importance that the issues have to the People. Petitioner would like the Court to know that instances listed here are not infrequent occurrences, but instead common in Petitioner's experiences representing himself. Petitioner has found in 5-6 years of self representation that it is difficult or impossible for judges to provide a ruling that favors a pro se litigant, even when the law and/or the facts are substantially on the pro se litigants side.

The issues raised here are not presented in chronological order. Instead violations of due process rights that occurred at the Michigan Court of Appeals are presented first, since it is the most superior Michigan court having had jurisdiction and since the Court may not get to the other issues. Issues then are raised that are from the trial court.

1. THE QUESTIONS PRESENTED SHOULD BE CONSIDERED BY THIS COURT BECAUSE THE DUE PROCESS RIGHTS OF PETITIONER, AND LIKELY OTHERS IN THE STATE OF MICHIGAN, ARE BEING REPEATEDLY VIOLATED BY THE MICHIGAN COURT OF APPEAL'S DISMISSAL OF APPEALS BY RIGHT WITHOUT THE REQUIRED DUE PROCESS OF A HEARING, ARGUMENTS AND DECISION ON THE MERITS. THEIR ALLEGATIONS OF UNTIMELINESS AND LACK OF JURISDICTION ARE COMPLETELY FALSE &/OR ERRONEOUS AND CONTAIN NO SUPPORTING FACTUAL EVIDENCE WHATSOEVER.

It is established law that a motion for summary disposition is subject to de novo review.

"The Court understands that a decision granting summary judgment is subject to review de novo. **Planned Parenthood, Sioux Falls Clinic v Miller**, 860 F. Supp 1409 (W.D. Mich 1994) p 1413

In order to get any review, jurisdiction in some court must be gained. Michigan law provides for appeal by right to the Michigan Court of Appeals for cases filed in the circuit court. MCR 7.203 (A)(1)

But the Michigan Court of Appeals unjustly dismissed Petitioner's appeal by right without so much as a hearing claiming they had no jurisdiction and claiming the appeal was untimely, but citing not one fact in support of their decision. (App I)

(Petitioner raised the issues at the Michigan Supreme Court. See Corrected Brief, p 41-45. See also re: absence of facts, Corrected Brief, p 18-27. See also re: jurisdiction, Corrected Brief, p 34-40.)

A. The Law

According to the Michigan Court Rules (MCR) the Court of Appeals has jurisdiction for an appeal of right from "final order(s) of the circuit court". MCR 7.203 (A)(1). Also see, **Breuhan v Plymouth-Canton Community Schools**, 137 Mich. App. 813, 815; 359 NW2d 566 (1984), lv gtd 422 Mich 934 (1985), rev. on other grounds. On this basis, this case fully qualified for an appeal of right.

The Michigan Constitution requires that the Michigan Supreme Court "decisions . . shall contain a concise statements of the facts and reasons for each decision and reasons for each denial of leave to appeal . . " (Art VI, @ 6) However, no like provision is made for the Court of Appeals. It is clearly evident that no facts were cited by the Court of Appeals. (App I) Petitioner contends decisions without facts in support and reasons given violates basic due process rights of the People and maybe other rights.

B. The Relevant Facts

Petitioner filed a Motion for Rehearing-New Trial and Brief on about January 20, 1994.

Subsequently, on February 24, 1994 the Judge ruled the motion was one for rehearing (14 days), not new trial (21 days), and ruled as a result the motion was untimely. (App F)

On March 21, 1994 the Order was signed, but not filed until March 22, 1994. (Mysteriously again no clerk's notice of signing was ever sent to the Plaintiff - confirmed by docket entries.)

Bush filed his claim of appeal by right with the Michigan Court of Appeals within the meager 21 days allowed on April 11, 1994. (MCR 7.203 (A)(1); MCR 7.204(A)(1); Evidence—docketing entries OCCC.)

Therefore, the only facts the Court of Appeals could possibly rely upon to state it has no jurisdiction would be at the trial court. But even if that argument could be made, (it shouldn't be allowed) it is rebuttable with substantial due process violations clearly apparent there and therefore would not hold water in a fair hearing in a just court.

C. Legal Argument

Obviously, the purpose of an appeal of right in a civil case is to fully examine the ruling below and the evidence relied upon (if any) in the decision and the procedure followed to determine if the judgment was correct or in error, the same as in a criminal case where guilt has been decided. **Evitts v Lucey**, 469 US 387, 83 L Ed 2d 821, 835, 105 S Ct 830 (1985) [**Evitts** is a criminal case with an appeal by right with direct application to this civil case and other of the Petitioner's several appeals of right under MCR 7.203 (A) and other provisions of Michigan law that have been dismissed by the Michigan Court of Appeals without hearing the appeals. 3 to date. All against governmental Respondent, Zeeland Public Schools. MCA #187345, MCA #179315, & the present case.]

As a result of the establishment of an appeal of right, according to the US Supreme Court, Constitutional due process "must" be accorded the appellant in judicial proceedings.

> "When a state opts to act in a field where its action has significant discretionary elements, such as the establishment of a system of appellate review as of right although not required to do so, it must nonetheless act in accord with the dictates of the Constitution, and, in particular, in accord with the due process clause of the Fourteenth Amendment." **Evitts v Lucey**, 469 US 387, 83 L Ed 2d 821, 823, 105 S Ct 830 (1985) headnote. (emphasis added)

Due process is an attempt to gain "fairness" in dealings with the state. **Evitts**, **supra**, 823, 836. It is apparent to this Petitioner that there has been no "fairness" to date, neither in the trial court or the Court of Appeals, especially in the dismissal of the appeal of right without so much as a hearing or chance to defend the timeliness of the appeal and no facts cited.

Obviously, the dismissal of this case where several years of salary are at stake is a "serious injury" to Petitioner. Although no facts are recorded, the Court of Appeals relied on someone's view (clerk's?) of the facts to determine timeliness. The court may also have relied upon certain facts to determine timeliness, although they are not stated and Petitioner can't imagine what they would be. Therefore, the requirements of the US Supreme Court case of **Goldberg v Kelly** become mandatory.

In **Goldberg**, the Court stated the requirements:

Headnote 18. "It is an immutable principle of jurisprudence that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the government's case, consisting of documentary evidence and even more important, testimony, must be disclosed to the individual so that he has an opportunity to show that it is untrue." **Goldberg v Kelly**, 397 US 254, 25 L Ed 2d 287, 289, 90 S Ct 1011, (1970) (emphasis added) [A case dealing with termination of welfare rights.]

In the Court of Appeals' final order to dismiss without even hearing the case or even having a hearing on timeliness, the Court provided no evidence whatsoever of its "fact finding" or other "evidence" of untimeliness. (App I)

In **Goldberg**, (p 290) the Court found that "due process" required an "evidentiary hearing before termination of [welfare] benefits" (emphasis added). In another case, **Joint Anti-Fascist Comm v McGrath**, (cite below) the Supreme Court has protected the "loss of any kind" by requiring the right to be "heard before" the loss occurred. A loss of "any kind" would include the loss of an appeal by right, as here. They stated:

(The) "right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society." **Joint Anti-Fascist Comm v McGrath**, 341 US 123, 168, 95 L Ed 817, 71 S Ct 624 (1951). (emphasis added) See also: **Bell v Burson**, 402 US 535, 542, 29 L Ed 90, 91 S Ct 1586.

An appeal of right is obviously a benefit and safety protection for ones judicial interests, the loss of which is a "grievous loss", which, therefore, is deserving of an evidentiary hearing "before" termination of ones right of appeal becomes final and, often, irreversibly so - as here. (See NOTE below p17).

This Court's reasoning, which is very valid, was that a "hearing" would provide the person an opportunity and:

"chance, . . to be fully informed of the case against him so that he may contest its basis and produce evidence in rebuttal." **Goldberg**, 290. (emphasis added)

The appeal of right in the Court of Appeals (or other tribunal) is no different. The Appellant (Petitioner) has a due process right to know what the alleged facts of untimeliness are so that he may then be able to dispute those facts and has a right to a hearing to "produce evidence in rebuttal" to the untimeliness allegations or evidence, if there is any. Hopefully a different result would be provided in a "fair hearing." **Atchison, T & S F R Co. v United States**, 284 US 248, 262, 76 L Ed 280 (1931)

The **Goldberg** Court indicated that due process is violated without the required procedures. They stated:

> "The fundamental requisite of due process of law is the opportunity to be heard; the hearing must be at a meaningful time and in a meaningful manner." **Goldberg**, **supra**, p 290. (emphasis added)

They said also that it is "constitutionally inadequate where such procedures do not permit the recipient to appear personally" before the decision maker. (**Goldberg**, p 291) The detrimental effect it has is to "preclude the recipient from presenting evidence" to the decision maker "orally" (**Goldberg**, p 291) The person must be "allowed to state his position orally". (**Goldberg**, p 291).

Since, in this case, there was no hearing at all on timeliness and hence no chance to argue "orally" the timeliness of the appeal or factors possibly affecting timeliness before the termination of Bush's appeal of right, his "due process" rights have been clearly terminated unjustly and unconstitutionally.

In summary, it is apparent that Petitioner's Constitutional rights that have been clearly violated in this case to date. First, there was no required clear statement of the facts upon which the Court of Appeals determined timeliness. Therefore, there was no set of facts to dispute, as well as no opportunity to dispute the facts. Second, no hearing was provided where the facts relied upon could be rebutted with evidence or any new evidence provided to gain a different opinion. Third, no opportunity was provided to orally argue against the dismissal in person. Fourth, the right of the Petitioner to appeal was terminated "before" any of the due process rights above had been accorded him. Therefore, it is apparent that none of the required Constitutional "due process" was provided. Because of the failure of the Court of Appeals to provide Constitutional "due process" the dismissal ruling of the Court of Appeals should, at the least, be reversed and the case remanded there for hearing consistent with the requisite "due process."

One further note. This same argument of the right of judicial due process was presented to the Michigan Supreme Court (#100958, Brief p 19-20, 41-45) and they refused to grant leave, even though the law as presented here seems quite clear as to the duties and responsibilities of the Michigan courts in this matter of Constitutional Due Process and the application it has to the People's judicial rights. (It has been Petitioner's experience that some Michigan courts seem unable [or unwilling] to draw valid applicable implications from the decisions of superior jurisdictions to the cases at bar. Perhaps that is why the US Supreme Court is asked to deal with so many hundreds of cases a year.

In summary, 14th Amendment Constitutional "due process" would at the least demand that a ruling be based on true facts proclaimed and evident in the decision. Here there are no facts cited by the Court of Appeals. In fact, Petitioner on appeal to the Michigan Supreme Court, had to speculate as to what the Court might have meant when it ruled the Appeal was not timely. There is absolutely no basis in fact and none is pointed to by the Court of Appeals. In fact, every indication and record indicates clearly that the appeal to the Court of Appeals was timely. (The trial court docket entries of the case, counting the days, etc.) Due process has clearly been violated.

(NOTE for the benefit of the Court. Of 4 cases Appellant has filed with the Michigan Court of Appeals by right, only one reached a hearing and decision on the merits. See MCA #187345, #179315, #174330-this case, #170293-hearing. None were untimely when filed. More than one has been rejected on motion for rehearing because they were mailed instead of hand delivered. Petitioner just learned that his subsequent delayed leave to appeal to the Michigan Supreme Court in MCA #187345, mailed on November 10, 1995, has been denied docketing because it was late by less than two weeks. Petitioner states that it was late due to a combination of events including a two week delay in the Michigan Court of Appeals Clerk's notice that he missed a filing deadline by one day -Petitioner's nonculpable error, death in family, and another related case had to be filed with the Michigan Supreme Court. Petitioner notes that if more time were allowed some of these problems would not prohibit justice from being done because of time restraints.)

Petitioner notes that "equal protection" is involved when one class of appellant's, pro se, are treated differently than other classes.

> 'Equal Protection,' on the other hand, emphasizes disparity in treatment by a State between classes of individuals whose situations

are arguably indistinguishable." In cases like Griffin and Douglas, due process concerns were involved because the States involved had set up a system of appeals as of right but had refused to offer each defendant a fair opportunity to obtain an adjudication on the merits of his appeal. Equal protection concerns were involved because the State treated a class of defendants —indigent ones—differently for purposes of offering them a meaningful appeal. Both of these concerns were implicated in the Griffin and Douglas cases and both Clauses supported the decisions reached by this Court." **Evitts v Lucey,** 469 US 387, 405, 83 L Ed 2d 821, 105 S Ct 830 (1984-85) (emphasis added)

Equal protection is involved here because pro se appellants are "treated . . . differently for purposes of offering them a meaningful appeal." "[D]ifferently" in the extreme — their appeals by right are dismissed without just cause!

2. THIS CASE SHOULD BE CONSIDERED BY THIS COURT BECAUSE DUE PROCESS WAS DENIED PETITIONER WHEN HIS TIMELY MAILED MOTION FOR REHEARING WAS REJECTED AND RETURNED BY THE COURT CLERK.

Petitioner is not aware of any case that has come before the US Supreme Court with a similar question. Petitioner raised the issue at the Michigan Supreme Court. See Corrected Brief, p 1-6.

The facts again are clear and simple. After dismissal by the Michigan Court of Appeals, the Assistant Clerk of the Court of Appeals refused to docket Petitioner's timely mailed Motion for Rehearing claiming it was "not received . . . within 21 days . . ". (App J) (emphasis added)

The Assistant Clerk does not specifically state that mailing a document to the Court within the time period allowed is prohibited for some good reason. Nor is there any statement that it is against the law, prejudicial or give any other reason. But the facts indicate that mailing is the problem.

(The court has a double standard. At all times on appeal the deadlines for the Appellant are very strict, but the clerk has extended the times allowed for Appellee (Respondents) to file briefs without any request. The appellee often has a longer time to respond than the appellant did in the first place. It doesn't make sense.)

Petitioner had a meager 21 days to file a motion for rehearing

with the Michigan Court of Appeals after their decision to dismiss according to MCR 7.215 (H). Petitioner mailed his Motion on August 29, 1994 according to Petitioner's sworn proof of service (and other evidence). The Court of Appeals time and date stamped the proof of service and other documents on August 30, 1994, the 22nd day. Therefore, the only conclusion that can be reached is that timely mailed filings are not allowed by the Michigan Court of Appeals Clerk for some unexplained reason.

One due process problem is there is no clear prohibition against timely mailing as timely filing. The clerk cites no authority. Therefore, the clerk's action is just sudden and unexpected death to one's case and judicial rights, which seems to violate one's right to know what is allowed and prohibited by the government under the First Amendment and "due process" under other Amendments.

There is no law, or precedent, or even court rule that Petitioner is aware of and none that the various jurisdictions have been able to point to that prohibits a timely mailed filing from being considered timely filed. But despite these facts, the court clerk here (and the Tenure Commission in another of Petitioner's legal disputes with these Defendants) have refused to accept (or dismissed, in the tenure case) timely mailed filings as allegedly untimely filed. Whatever is not clearly prohibited for good cause should be allowed.

It seems that the ruling below would have general application to this problem.

> "Since the trial court's [clerk's] ruling was based on a practice of the judges [clerk] of the circuit, it was not based upon any rule of law and we must therefore reverse." p 670 **Biafore v Baker**, 119 Mich App 667, (1982) (emphasis added)

If the court clerk's action is a "practice" and not based on law should it be allowed? Doesn't this "practice" violate due process?

On the other hand, however, there is ample evidence of law, rules and examples to support Petitioner's "timely mailed equals timely filed" argument. At the very least, there is no clearly established line, rule, law, etc. on the matter that Petitioner is aware of. But there is some conflict with other jurisdictions, precedents, and possibly even the Michigan Court Rules.

Furthermore, the rules of the US Supreme Court are an example of just due process in this matter.

A. The US Supreme Court Rule

US Supreme Court Rules, Effective January 1, 1990.
PART VII. PRACTICE AND PROCEDURE, Rule #29
Filing and Service of Documents

".1 Any pleading, motion, notice, brief, or other document or paper required or permitted to be presented to this Court or to a Justice, shall be filed with the Clerk. (Additional instructions omitted).

.2 To be timely filed, a document must actually be received by the Clerk within the time specified for filing; or be sent to the Clerk by first-class mail, postage prepaid, and bear a postmark showing that the document was mailed on or before the last day for filing" (emphasis added)

B. Michigan Court Rule

One part of the Michigan Court Rules regarding time is a worthy consideration.

"Service by mail is complete at the time of mailing." MCR 2.107(C)(3)

C. Michigan Precedents

In Michigan, a timely mailed complaint is acceptable and not considered late. Consider the following:

"Good faith mailing to officer of summons and complaint is equivalent to physical delivery for purpose of tolling statue of limitations and the 90 day tolling period commences upon mailing. **Kuenzer v Osborn** (1970) 180 NW2d 298, 24 Mich App 170, affirmed 189 NW2d 207, 385 Mich 517. (emphasis added)

In other Michigan precedents, the issue seems not to have been addressed.

". . . the proper rule may be that a party who relies on the mail does so at his peril. However, that issue was not contested below and is not raised on appeal." **Biafore v Baker**, 119 Mich App 667, 670 (1982)

The Michigan Supreme Court in dismissing Petitioner's applica-

tion for leave to appeal stated:

> "we are not persuaded that the questions presented should be reviewed by this Court." (App J)

So even though the issue of accepting timely mailed filings was presented to the that Court, they refused to consider it despite the apparent injustice and unfairness the practice promotes. See Corrected Brief p 1-6

Petitioner can state for the record that factually it is common to reject timely mailed filings in Michigan, despite the damage and violations they cause to the due process and equal protection rights of the People. (Petitioner had one tenure filing rejected in 1994 because it was timely mailed, but not allegedly timely filed.)

This Court should consider how discriminatory, unfair and unequal the practice really is.

For persons representing themselves especially, to not know what is prohibited, is often, if not always, fatal to their case. Secondly, those who are pro se and poor can especially not afford to waste precious financial resources on repeated briefs, appeals, fees, etc., where nothing is decided and unknown technicalities jump out at them, trip them up and end at the pit of injustice. Their faith in the "justice" system is gone.

Third, those who are a great distance from the court house or disadvantaged in some way are at a distinct disadvantage. To hand deliver a filing from the Upper Peninsula of Michigan to the Lansing court house could be a 10-15 hour trip one way. Even by mail it could be a several days. How would they know how many days to allow for the mail? In addition, their allowed appeal time is therefore unjustly shortened considerably (2 days = 10% of 21 days). It is certain they cannot possibly hand deliver every filing, especially in the winter with dangerous snow covered roads, etc. Petitioner has made several hurried 100 mile one way trips to Lansing just to file on time, when $5-$10 in postage would have done the same thing if it was mailed to the US Supreme Court.

The US Supreme Court's practice is just. The People of Alaska and Hawaii can file the same day as those of D.C. without undue hardship.

An additional problem is evident. Michigan has no procedure for appeal of the clerks action in refusing to docket the motion. Justice requires a review process. Consider an example. When an extension of time for filing a brief or motion is made and is denied by action of the Clerk of the US Supreme Court, the decision may be appealed to a Justice or the whole Supreme Court. (Id, Rule 30.4) Such a rule seems reasonable in this instance when the clerks action bars a filing, but it isn't allowed in Michigan. (US Supreme Court Clerk blocks *amius curiae*

brief's without chance to be decided by Justice of the Court, simply because no bar attorney's name was on the cover.)

When the court is denied the right to hear the motion and decide it by the court clerk, the court is denied the right to correct errors and things otherwise mistaken and the appellant is denied justice.

The US Supreme Court has stated the purpose for rehearing.

> "Ordinarily, a petition for rehearing is for the purpose of directing attention to matters said to have been overlooked or mistakenly conceived in the original decision and thus invites a reconsideration upon the record upon which that decision rested." **Atchison, T & S F R Co. v United States**, 284 US 248, 259-260, 76 L Ed 280 (1931) (emphasis added)

> "In the discharge of its duty, a fair hearing is a fundamental requirement." **Atchison**, supra at 262.

The initial decision by the Court of Appeals in this case on the timeliness issue falls into the "mistakenly conceived" category. Obviously however, Petitioner's "due process" rights in an appeal of right were "overlooked" as well. In addition, there has not been any "fair hearing," as required in an appeal of right. In fact there has been NO HEARING.

"Fair hearing(s)" are certainly not conducted by court clerks, but obviously they can prevent a fair hearing from ever occurring, as the present facts indicate happened. (The Court of Appeals record of the case also indicates that it was a motion of the clerk that caused the appeal by right to be dismissed. Entry 8/8/94 "Order Dismiss-Clerk's Proposal.") If rehearing had been allowed (or of course the appeal of right heard), this case would never be here today.

There is another logical argument. Since documents are mailed from the court to the People at the beginning of the time period and are acceptable, why are not mailings to the court from the People acceptable at the end of the time allowed for appeal? Is not what is "good for the goose" also "good for the gander?"

The Peoples' judicial rights should not be based upon vague (or absent) rules and narrow interpretations thereof or left open to question or lost because of technicalities with little Constitutional justification.

3. THE COURT SHOULD HEAR THIS CASE BECAUSE OF THE MULTIPLE VIOLATIONS OF DUE PROCESS AT THE TRIAL COURT.

Some of the violations of due process at the trial court level were addressed to the Michigan Supreme Court in Petitioners Corrected Brief in the limited time he had to make a delayed leave to appeal. Re: delayed or absent notices p 8-18. Re: misconduct p 12-14. The issues not raise should be considered issues raised at the Court of Appeals had the appeal of right not been dismissed before they could be raised.

A. Judgment Inconsistent With The Facts And Law.

As shown in the Facts above, the trial court ruled in favor of the Respondent's motion for summary disposition, even though the judge doesn't mention his ruling is on a motion for summary disposition. (App A)

In regard to summary judgment, Justice Douglas dissenting stated:

> "There is sometimes a conflict between a claim for First Amendment protection and the need for orderly administration of the school system, as we noted in **Pickering v Board of Education**, 391 US 563, 569 20 L Ed 2d 811, 817, 88 S Ct 1731. That is one reason why summary judgments in this class of cases are seldom appropriate. Another reason is that careful factfinding is often necessary to know whether the given reason for nonrenewal of a teacher's contract is the real reason or a feigned one." (emphasis added) p 564 **Board of Regents v Roth**, 408 US 564, 33 L Ed 2d 548, 92 S Ct 2701 (1972) (See also **Cleveland, supra**, Brennan at 510.)

Summary judgment was not "appropriate" in this case. Here there is no evidence of the required "careful fact finding" by the trial court. Obviously there are "feigned" reasons alleged for the violation of the contract (fraud). Therefore, and in light of the allegations of fraud against Respondents by Petitioner, the court's judgment should be suspect, if not found to be outright wrong. Petitioner's Brief in Opposition to Summary Disposition presented numerous arguments against the statute of limitations. But the judge ignored the arguments and stare decisis.

Furthermore, there is no evidence of any standard of review. In **US v Rockland Trust Co.**, 860 F Supp 895, p 899 (1994) it provides, among other relevant statements, that the judge:

> "must view all the facts `in the light most favorable to the nonmoving party and indulge all inferences advantageous to that party, provided they arise reasonably from the record.' " (cite omitted) (emphasis added)

No such benefit was provided to Petitioner ie: "non-moving party" here.

Petitioner's allegations of fraud against Respondents are to be considered fact, they must be believed for summary disposition. The Defendants have continued to allege a decline in enrollment of major proportions, but have no factual proof. There is no doubt that Respondents engaged in the following for one purpose.

> "One who fraudulently makes a misrepresentation of fact, opinion, intention or law for the purpose of inducing another to act or refrain from action in reliance thereon in a business transaction is liable to the other for the harm caused to him by his justifiable reliance upon the misrepresentation." (cite omitted) **US v Rockland Trust Co.**, 860 F Supp 895, p 905 (1994)

Principal Jones, and Superintendent Harper and Zeeland Public Schools successfully made a fraudulent misrepresentation of fact to keep Bush from teaching. It is inconceivable that the statute of limitations would not be tolled when fraudulent representations are made. But that is what the court allowed. (App A)

Fraud should block the statute of limitations, as Petitioner has argued from the beginning. **Tomkins v Hollister & The First National Bank of Grand Rapids**, 60 Mich 470, 480, 27 NW 651 (1886)

In the alternative Petitioner has provided several arguments that the statute of limitations should have been tolled. (Brief Opp to Sum. Dispo. p 15-22) One reason to toll is because of the fiduciary relationship - employer - employee.

> "The correct rule is that the period of limitation does not begin to run until the fiduciary relationship ends—that is, until all the fiduciary's duties have been discharged or repudiated. See **O Toole v Hurley**. 15 Mich 517, 521; 73 NW 805, 806 (1898);" **Carpenter v Mumby**, 86 Mich App 739, 751, (1978)

The principal and superintendent and employer have a fiduciary relationship with an employee, they control the facts, the teachers assignment and position, the classes and course offerings of the school and the employee's "right to work." (See **Board of Regents v Roth**, supra, p 567.) Unethical conduct by a governmental "fiduciary," especially, should not be protected.

Equity is also a just defense and block to the statute of limitations, if it has expired.

> "`Courts of equity not only act in obedience and in analogy to the statutes of limitations in proper cases, but they also interfere, in many cases, to prevent the bar of the statutes where it would be inequitable or unjust. Thus, for example, if a party has perpetuated a fraud which has not been discovered until the statutable bar may apply to it at law, courts of equity will interpose, and remove the bar out of the way of the other injured party. *A fortiori* they will not allow such a bar to prevail, by mere analogy, to suits in equity, where it would be in furtherance of a manifest injustice.' 2 Story, Eq. Jur. Sec 1521: 13 Am. & Eng. Enc. Law, 680." **Allen v Conklin**, 112 Michigan Reports 74, 78 (1897). (emphasis added)

See also **Tomkins v Hollister & The First National Bank of Grand Rapids**, 60 Mich 470, 480-483, 27 NW 651 (1886); **Lothian v Detroit**, 414 Mich 160, 177-178 (1982).

Tolling of the time would seem appropriate also while the teacher tenure claim was pending, since it would have for the most part resolved the issues here, and would have been an additional and unnecessary burden on judicial resources and pro se plaintiff.

If, justice were to be served, an opposite result should have come from the trial court.

B. Fair and Impartial Judge?

The Michigan Supreme Court has ruled that the "most basic right of due process" is a "fair and impartial" judge.

> The right to a fair and impartial tribunal is the most basic right of due process. **Crampton v Dept of State**, 395 Mich 347 (1975).

That is a noble goal. But in everyday life, it is hardly a reality for pro se litigants, as clearly demonstrated by this case.

Here the trial courts ruling is prejudiced, one sided and fails to consider all the issues raised. Obviously, the pro se litigant and his case against these "respected" school officials didn't fit with the judges agenda. (An attorney had told Petitioner previously that mentioning fraud in Ottawa Co. Courts was fruitless and harmful to one's case. He was right.)

Maybe it has something to do with opposing Counsel March's first time revelation at the hearing for his motion for summary disposition that his law firm had "represented . . the Ottawa County Circuit Judges . . " (Hearing Transcript, p 2)

That caught Bush by surprise and he didn't know how to respond immediately. (Hearing Transcript, p 4)

But regardless of the connection, the judge continued to sit on the case and decide the issues in favor of Mr. March's clients -Respondents. (Trans p 4)

Such a disclosure should have been made a long time before the motion for summary judgment came to a hearing. (Hearing was Nov. 22, 1993, motion filed about Oct. 15, 1993.)

Could one conclude that "the right to a fair and impartial tribunal" was violated? Petitioner is convinced.

C. Misleading Opposing Counsel?

Mr. March, is Respondent's former counsel (removed from the case after Petitioner filed a complaint with the Michigan Attorney Grievance Commission charging fraud and misconduct). Here, after the motion for summary disposition was decided in his favor, Mr. March deliberately mislead the judge with his letter to the court alleging the wrong court rule had been applied by Petitioner in his Motion for Rehearing-New Trial. (See facts above, please.) (App E)

Mr. March convinced the judge that the rule with the shortest time allowance should prevail (14 days) and the judge fell for it and ruled his way. (App F)

The judge was wrong because he failed to consider some facts. At least three considerations should have been made by the judge. One was the fact that Petitioner had made a request for extention of time stating the clerk's Notice to him was late. (App D) The judge never mentions it. (App F) Another consideration is that had Petitioner appealed, the time would have been 21 days. MCR 7.204 (A)(1)(a) & (b). Third, the rules are certainly vague and apparently offer no post judgment rehearing.

Under the First Amendment time requirements should be absolutely clear. Here they are not clear at all. Therefore, Mr. March was able to easily mislead the court and do injustice to Petitioner.

D. Do Late Or Absent Notices By The Clerk Violate Due Process?

Michigan, or maybe just the Ottawa County Circuit Court, has a couple of questionable practices. One is having the winning party send a copy of the signed order to the losing party, which may not seem so bad, except for the rest of the story. It takes away the loser's time to appeal.

Assume conservatively it takes 2 days to notify the winner by mail and assume the winner is very prompt and ethical and thus sends a

copy of the order on to the loser the next day and it takes two days to receive it. 4 days have passed of the loser's period of time for appeal or rehearing, whatever time it is. Even the court rule does not require this prompt of action. MCR 2.602 (D)(1)

Assume on the other hand, the winning attorney was the "win at any cost" type, like Respondent's attorney's. Would the mailing be so prompt? No. Would it ever get there? Maybe not. Would it be delayed until the time has all but expired? Possibly.

The second questionable practice has to do with court clerk notices of signing of orders. (App C) The notice says it is allegedly sent to both parties at the same time, but that conflicts with the facts here. It is a fact that notices were very late or not sent at all to Petitioner. (App C. None sent after App F decision.) It is also fact that in almost every instance, if not every one, the Respondents received notice first somehow.

The facts are clear that Notices to Petitioner after Orders were signed were not sent, in one instance, until more than a week after the order was signed. (App C) After the second order in the case was signed, no Notice was sent by the Clerk to Petitioner, who again had to appeal or take other preservative action. (App H)

In the first instance, Mr. March received Notice before Bush did (the same is true of other notices). In the second instance, Mr. March received Notice when Bush never did. There is no valid reason why the winning party should receive notice before or instead of the losing party. Fairness is involved because the losing party must take action, not the winner. Petitioner suspects that someone on the inside of the court clerk's office has been assisting Mr. March's defense by the actions described here. (There are Mark Furhman's in the court clerk's office too.)

The problem, as was noted in the facts section above, is that notices to the losing party from the clerk are often unnecessarily delayed or not provided at all, when it is the losing party that must appeal or move for rehearing. Often if not always the winning party had notice way before the losing party (Petitioner). If the losing party has to wait for the copy of the order to come from the winning party, it may never come or come so late no appeal could be timely made. That is what happened here after the signing of the orders at the trial court.

Due process would surely call these practices a violation of the rules of fair play, true? Why should the losing party have to depend on the winning party for notice of the beginning of the running of the time for appeal or rehearing? Doesn't that open the door for fraud and other misconduct? Petitioner contends more than possible that Mr.

March, through his connections to the court employees, exposed above, had influence sufficient to get the notices from the clerk to Petitioner delayed or not sent at all in order to gain an unjust advantage over Petitioner on appeal by creating a situation where he will likely be late or creat such a poor filing it would be easily rejected?

Why should the losing party lose all that time in waiting without even knowing the appeal clock has been running?

In sports the whistle blows for both teams at the same time, but it doesn't at Ottawa County Circuit Court. There the winner is given unjust advantages and the loser the handicaps.

In conclusion, it seems evident that significant due process violations exist in the trial court to question, at the least, the validity of the "fair[ness] and impartial[ity of the] tribunal." **Crampton**, **supra**. In addition, the fairness and accuracy of the judgment of the court has been called into question in that the judge refused to follow stare decisis and failed to apply any standard of review for summary disposition. In fact, the evidence presented could clearly have been sufficient to make a ruling in Petitioner's favor, if reviewed by a fair judge. Sufficient reasons exist for review by the US Supreme Court.

Concerning a trial court situation, Justice Brennan in a concurring opinion in **Cleveland**, **supra**, 512 said:

> "Allegations at this early stage are to be liberally construed, and "[i]t is axiomatic that a complaint should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.' " (citations omitted)

If the trial judge had applied a bit of the wisdom of this Court as cited, this Court might never have seen this case.

4. THE COURT SHOULD HEAR THIS CASE BECAUSE PETITIONER HAS BEEN UNJUSTLY DENIED HIS RIGHT TO A JURY TRIAL.

Petitioner properly requested a jury trial in this matter. The US Constitution's 7th Amendment gives one the right to jury trial in a civil case such as this. In a case involving an attorney sued by a client, the US Supreme Court decided the client had the right to a jury trial. In **Simler v Conner**, 372 US 221, 9 L ed 2d 691, 83 S Ct 609, (1963) they said:

"The federal policy favoring jury trials is of historic and continu-

ing strength." (multiple citations omitted) p 693

> "Only through a holding that the jury-trial right is to be determined according to federal law can the uniformity in its exercise which is demanded by the Seventh Amendment be achieved." p 693

They also stated:

> "in view of conflicting facts presented by affidavits and depositions . . summary judgment was not warranted." **Id**. (emphasis added)

The same reasoning can be applied to this case regarding the "conflicting facts."

The Court concluded, as it should in this case:

> "Accordingly, the courts below erred in denying petitioner the jury trial guaranteed him by the Seventh Amendment and the judgment is reversed." **Id**. p 694 (emphasis added)

The Michigan Constitution has a jury trial right also. Article I, sec 14. The jury provision was properly invoked by both parties. But, despite the request, the right to a jury trial has been unjustly denied.

The US Supreme Court said it would accept cases involving denial of the jury trial right.

> "Because of the novel nature of the Seventh Amendment question [jury trial], we granted certiorari. 411 US 915, 36 L Ed 2d 306, 93 S Ct 1556 (1973)." **Pernell v Southhall Realty**, 416 US 363, 40 L Ed 2d 198, 203, 94 S Ct 1723 (1974)

Appellant respectfully requests the Court also grant certiorari to review the question in light of the facts in this case.

5. THE COURT SHOULD HEAR THIS CASE BECAUSE IT CLEARLY DEMONSTRATES THE VAST EXTENT OF THE VIOLATIONS OF THE CONSTITUTIONAL RIGHT TO JUSTICE WHEN ONE REPRESENTS ONESELF IN A COURT OF LAW AND DEMONSTRATES IN PART REASONS WHY THE PEOPLE HAVE LOST FAITH IN THE GOVERNMENT.

Above Petitioner has provided substantial arguments against what has been done in the name of "justice" in this case. But the court should not consider this as an isolated incident of injustice, because it is not! Petitioner has been involved in litigation as a pro se litigant since this time in 1989 with Zeeland Public Schools and what is contained here is typical of the "justice" he has found at the hands of different tribunals in the years since. If the Supreme Court could review each incident, it would not believe the magnitude of the injustice perpetrated as "justice" by these tribunals against pro se litigants, the most vulnerable of all litigants. The government and its high paid attorney's are always favored.

The right to self representation this Court has found to be a great ad historical right of enduring proportions. **Farretta v California**, 422 US 806, 45 L Ed2d 562, 95 S Ct 2525 (1975)

But the problem faced 20 years ago by **Farretta**, is vastly different than the one faced today in this case. Here the problem is not "may you represent yourself?," but "can you find any justice when you do represent yourself?"

Judges know they can't deny one the right to represent himself. They couldn't get away with that. They also know that there is no enforcement if they are prejudiced toward a pro se litigant or unjust in their judgments toward them. (Besides its hard to prove.)

Part of the reason may have to do with a judges fear of being reversed. Where is he most vulnerable, siding with a pro se litigant? or siding with an attorney who is vastly more likely to get a reversal on appeal? The answer is obvious. Even if judges thought a pro se litigant was right in every respect, they would fear reversal. How would they rule? Petitioner says, based on his experiences, they would not rule for the pro se litigant. (This fact can be backed up with many different factual instances where judges did not rule for the pro se litigant when the law and the facts were on his side.)

If one were being denied justice because of race or sex, a civil rights complaint could maybe be filed against the unfair tribunal. **Forrester v White**, 484 US 219, 98 L Ed 2d 555, 108 S Ct 538 (1988) But since self representation is a totally unprotected Constitutional right, apparently nothing can be done when injustice prevails. **Stump v Sparkman**, 435 US 349, 55 L Ed 2d 331, 98 S Ct 1099, Reh den (1978) Therefore, discrimination against the pro se litigant is condoned in state courts across Michigan without fear or consequence. **Stump**, **supra**.

If the Court argues that a complaint should be lodged with the state judicial tenure commission, it might think it has resolved the issue. But,

if the Court considers the fact that only 4 cases of some 240 or so cases (majority probably filed by attorneys) resulted in any discipline for Michigan judges, it has lost that argument. Furthermore, how would the average pro se litigant know to file a complaint?

Beyond that and most importantly, by then the pro se litigant has lost his case and his rights and the justice he really deserved is gone forever. All he has left is the bitter taste of "justice" remaining in his soul for the rest of his life. It is obvious those bitter experiences with government and its undisciplined propensity for injustices sometimes erupt into Oklahoma bombings in protestation.

The Court should consider some related facts from Petitioner's pro se experiences. Petitioner has had 6 different cases before 4 different judges at Ottawa County Circuit Court since 1989 (& none in the previous 45 years). Not one judge has ruled in his favor.

However, it is Petitioner's firm belief that if an unbiased judge (who didn't know he was pro se) were to look at the facts &/or the law of every instance they would have found oppositely. (The Court has already been made aware that Petitioner has had 3 appeals by right dismissed without just cause. Above (1, page 17)

Petitioner has lodged this complaint with the Michigan Supreme Court more than once. (See Corrected Brief p 45) Petitioner has also previously made the same complaint to the US Supreme Court in a different, but related case. See #92-1167 Writ Brief II., Reply Brief III., Supplemental Brief I., Rehearing Brief II.

While it may be true that:

> "one who is his own lawyer has a fool for a client," **Faretta, supra** 592.

the fact is that many people must represent themselves. If not, they go so deeply into debt so as to permanently harm themselves for the rest of their life or go bankrupt in the pursuit of the elusive "justice."

One judge said recently to Petitioner:

> "You come into court and try to represent yourself, you do so at your peril."

Is the "peril" perpetual and persistent injustice? Or is the "peril" financial ruin? Or is it both? The correct answer, in Petitioner's opinion, is BOTH.

The Court should consider that Petitioner was laid off for over 5 years, without a steady income—some unemployment plus some substitute teaching. Is it fair that he remortgage his house for 30 years to hire an attorney when the outcome is uncertain? Should one gamble with the few remaining essential resources of the family for the sake of elusive "justice?" Petitioner had already lost 5 years of retirement credit and 5 years of income. How could he have afforded an attorney to litigate from 1987 to the present? What would he have left but a pile of debt? Justice Marshall stated his view of some of the deprivations in **Cleveland Bd. of Educ. v Loudermill, Parma Bd. of Educ. v Donnelly**, 470 US 532, 84 L Ed 2nd 494, 508-510, 105 S Ct 1487 (1983)

As for another job, teachers only have a small window of time yearly to get a job. Teachers with 10 years or more experience, as Petitioner had, are not wanted because they are too expensive compared to new teachers. Besides he didn't have a good recommendation, through no fault of his own doing.

CONCLUSION

As the Court can readily see, several violations of clearly established constitutional rights have been proven and, therefore, are grounds for this Court to assume jurisdiction and review.

In light of the Constitution, the evidence and the law, it is clear that the trial court judge and Michigan Court of Appeals judges have not performed their duties in the name of "justice." In short, in this pro se case and contrary to the will of this Honorable Court:

> [the] judges have felt free to roam where unguided speculation might take them." **Poe v Ullman**, 367 US 497, 6 L ed 2d 989, 1019, 81 S Ct 1752 (1961) (no opinion by a majority)

That is why this case is here today. The Supreme Court can again attempt to end such injustices from the bench.

Petitioner would hope and pray the Supreme Court of the United States would not encourage or endorse governmental abuse of the People, or those who are employed thereby and/or those who have contracts with the government, be it local or national, as demonstrated here. The government, above all other in a free country claiming to be "one nation under God, individible, with liberty and justice for all," should have the highest ethical principles. Substantially higher than what has been demonstrated to date to Petitioner. Only the Supreme Court can assure that it will, at least in this case, have a higher standard.

The facts and the law, as presented, support the Petitioner's claims of violation of Constitutional rights (Amendments 1, 7, 9, 14) warranting the review by the US Supreme Court.

In the alternative, should the court not grant review, Petitioner would request the case be remanded to the Michigan Court of Appeals as an appeal by right for decision on the merits with sufficient time granted for submission of briefs, etc.

Respectfully submitted,

THANKSGIVING DAY
November 23, 1995

Gerald D. Bush
Petitioner, pro se
724 E. Central
Zeeland, Michigan 49464
616-772-2398

Bush v Jones, et al
File No. 93-19118-CK
jac

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OTTAWA

GERALD BUSH.
Plaintiff,

v

OPINION
File No. 93-11918-CK
(Incorrect number)
93-19118-CK (Correct)

MICHAEL Z. JONES, DR. KENNETH HARPER,
ZEELAND PUBLIC SCHOOLS BOARD OF EDUCATION,
Defendants.

Plaintiff was an industrial arts teacher with the Zeeland Schools from 1969 through 1981 when he was laid off from his full time position, but was offered a 3/5's time position. He declined the part time employment. The following year, the part time position was increased to 4/5's but was not offered to Bush. Bush filed a grievance which was decided in his favor in July, 1993.

Rather than reinstate Bush for the 1983-84 school year, defendants negotiated a sabbatical leave (Appendix 1 to plaintiff's complaint). The contract said Bush "shall be returned to full time teaching status for the 1984-85 school year" unless he, Bush, agreed to resign, in which case he would receive a year's severance pay plus the value of his fringe benefits. Bush says the defendants breached this contract by not re-employing him for the 1984-85 school year.

Bush admits that he was not returned to full time teacher status in 1984-85 nor did he resign and receive severance pay. Therefore, it is evident the contract upon which Bush predicates this cause of action was allegedly breached in the fall of 1984. This action was not filed until August 25, 1993, nine years after the claimed breach.

Plaintiff in his in pro per complaint recites paragraph 4: "This

complaint is over an individual contract bilaterally agreed to by the parties . . . A copy of this contract is included as Appendix 1." In the Statement of Facts of his brief submitted in opposition to defendant's motion for summary disposition plaintiff states:

"Plaintiff Bush filed suit against the defendants for violation of a written contract . . ."

In response to defendants' arguments that this contractual claim is barred by the statute of limitations, he argues: First, that the statute should be tolled as if this were a tenure commission matter. This is not a case involving the tenure law and plaintiff cites no authority for tolling the statute. Second, plaintiff argues that "fraud" waives the statute citing Kreuger v Grand Rapids and Ind R. R. Co., 51 Mich 142; 16 NW 313 (1883). That case holds that a "party seeking to set aside a transaction for fraud must move promptly . . ." a delay for a period longer than the statute barring the action is not prompt. Also, the Court held the six year statute would bar an action unless a continuing trespass was established in which case fraud in the inducement would need to be shown to negate the plaintiff's consent in signing a petition some eight years before filing suit. Plaintiff Bush is seeking enforcement of a contract not damages for trespass, Kreuger does not apply. Third, plaintiff contends the statute should not run until defendant revealed "critical facts" in May 1988. Plaintiff waited an additional five years and four months before filing this action. Based on his admission, plaintiff had knowledge of the breach and all the critical facts necessary to maintain his action, two years and three months before the statute of limitations barred his action.

The applicable statute of limitations is found in MCL600.5807; MSA 27A.5807:

"No person may bring or maintain any action to recover damages or sums due for breach of contract, or to enforce the specific performance of any contract unless, after the claim first accrued. . . he commences the action within the periods of time prescribed by this section.

(8) The period of limitations is 6 years for all other actions to recover damages or sums due for breach of contract.

If the "critical facts" necessary to determine that the contract had been breached were fraudulently concealed, the statute is ex-

tended to a time

". . . 2 years after the person who is entitled to bring the action discovers or should have discovered the existence of the claim . . ." MCR 600.5855; MSA 27A.5855

This provision would, if the element of concealment was established, assure that the period for filing is two years after discovery. Since the six year period did not run until the fall of 1990, the concealment section neither adds to nor curtails the six years bar.

The statute of limitations bars plaintiff's claim Barry v Detroit Terminal Ry Co., 307 Mich 226, 11 NW 867 (1943).

The court having determined that this action is barred by the statute of limitations, finds no need to discuss defendant's res judicata claim.

Dated: December 9, 1993

/s/ Wesley J. Nykamp,
Circuit Judge

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OTTAWA

FILE NO. 93-11918-CK (incorrect # 93-19118-CK)

NOTICE OF OPINION

GERALD BUSH
Plaintiff,
v
MICHAEL Z. JONES, DR. KENNETH HARPER, ZEELAND PUBLIC SCHOOLS BOARD OF EDUCATION
Defendant.

Please take notice that on the 9th day of December, 1993 an Opinion was filed in this cause.

TO:
Gerald Bush
Plaintiff/Attorney
724 E. Central
Zeeland, MI 49464

Jon G. March, Leonard A. Kuyvenhoven
Defendant/Attorney
800 Calder Plaza Place Bldg.
Grand Rapids, MI 49503

I herby certify that copies of the Opinion were served upon the parties/attorneys of record in this cause on the 9th day of December, 1993 by ordinary mail.

DANIEL C. KRUEGER, OTTAWA COUNTY CLERK
By: L M. (unintelligible)
Deputy Clerk of the Court

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OTTAWA

GERALD BUSH,
Plaintiff,

File No. 93-19118-CK

V

HON. WESLEY J. NYKAMP

MICHAEL Z. JONES, DR. KENNETH HARPER, ZEELAND PUBLIC SCHOOLS BOARD OF EDUCATION,
Defendants.

GERALD D. BUSH
In Pro Per
724 E. Central
Zeeland, Michigan 49464
(616) 772-2398

JON G. MARCH (P17065)
LEONARD A. KUYVENHOVEN (P45392)
Miller, Johnson, Snell & Cummiskey
Attorneys for Defendants
800 Calder Plaza Building
Grand Rapids, Michigan 49503
(616) 459-8311

ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY DISPOSITION

At a session of said Court held in the City of Grand Haven,

County of ottawa, State on Michigan, on the day of 22nd day of December, 1993.

PRESENT: Honorable ~~Wesley J. Nykamp~~ Calvin L. Bosman
Circuit Judge

On or about October 18, 1993 defendants filed their Motion for Summary Disposition and supporting papers. On or about November 15, 1993 plaintiff filed a brief and affidavit in opposition to the motion for summary disposition. On November 22, 1993 the Court heard oral argument on the motion. On December 9, 1993 the Court filed its Opinion granting defendants' motion for summary disposition.

NOW, THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED, for the reasons set forth in the Court's written Opinion of December 9, 1993, that defendants' motion for summary disposition is granted and the case is dismissed.

Honorable ~~Wesley J. Nykamp,~~ Calvin L. Bosman
Circuit Judge
Calvin L. Bosman, Signed in the absence of
Wesley J. Nykamp, Circuit Judge

Attest true Copy
Sandra VandenBosch
Dep. Ottawa County Clerk

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE
COUNTY OF OTTAWA

FILE NO. 93-19118-CK

GERALD BUSH
Plaintiff

vs .

NOTICE

MICHAEL Z. JONES, DR. KENNETH HARPER, ZEELAND PUBLIC SCHOOLS BOARD OF EDUCATION
Defendant

Please take notice that on the 22nd day of Decemher 1993 a ORDER GRANTING DEFENDANTS' MOTION FOR SUMMMARY DISPOSITION was filed in this cause.

TO:
Gerald D. Bush
Plaintiff/Attorney
724 E. Central
Zeeland, MI 49464

Jon G. March, Leonard A. Kuyvenhoven
Defendant/Attorney
800 Calder Plaza Bld~.
Grand Rapids, MI 49503

I hereby certify that notices were served upon the parties/attorneys of record in this cause on the 30th day of December 1993 by ordinary mail.

DANIEL C. KRUEGER
OTTAWA COUNTY CLERK

By: /s/ Sandra VandenBosch
Deputy Clerk of the Court
jeg

Gerald Bush
724 E. Central
Zeeland, Michigan 49464

Judge Wesley J. Nykamp
Ottawa County Circuit Court
414 W. Washington
Grand Haven, Michigan 49417

January 5, 1994

Re: Bush v Jones, Harper, Zeeland Public Schools, 93-19118-CK

Dear Judge Nykamp:

I would like to file my objections to the lack of notice by the Court of the recent signing of the order granting Summary Disposition to Defendants in the above titled case.

Apparently the order was signed by Judge Calvin Bosman on December 22, 1993. But the Court Clerk did not send the notice of this until about 12-30-93 and we did not receive it until 12-31-93. Obviously this negatively affects my time to appearl or to ask for rehearing by shortening the time considerably.

To correct this injustice it is my position that the time should not begin to run until the notification by the Court Clerk has been sent. If you disagree, I would expect to hear from you with some just allowance for this injustice.

Sincerely yours,

/s/ Gerald Bush

cc: Jon March

State of Michigan
CIRCUIT COURT
TWENTIETH JUDICIAL CIRCUIT

January 20, 1994

Mr. Gerald Bush
724 E. Central
Zeeland, MI. 49464

Re; Bush v Jones, et al
File No. 93-19118-CK

Dear Mr. Bush:

Extension of time is only considered through motions, not correspondence to the Court.

Very truly yours,

/s/ Wesley J. Nykamp
Circuit Judge

cc: Jon March

jac

WESLEY J. NYKAMP, CIPCUIT JUDGE, OTTAWA COUNTY BUILDING,
GRAND HAVEN, MI 49417

MILLER, JOHNSON, SNELL & CUMMISKEY, P.L.C.
ATTORNEYS
800 CALDER PLAZA BUILDING • GRAND RAPIDS, MICHIGAN 49603
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KALAMAZOO, MICHIGAN 49007
616/343-0282

ONE MICHIGAN AVENUE
LANSING, MICHIGAN 48933
617/482-4488

Honorable Wesley J. Nykamp
Circuit Court Judge
Ottawa County Circuit Court
303 County Building
414 Washington Street
Grand Haven, Michigan 49417

January 25, 1994

Re: Gerald Bush v Michael Z. Jones, Dr. Kenneth Harper, Zeeland Public Schools Board of Education
File No. 93-19118-CK

Dear Judge Nykamp:

Our office represents the defendants in the above referenced lawsuit. In that capacity we are in receipt of a copy of Plaintiff's Motion for Rehearing/New Trial together with plaintiff's supporting Brief. The motion is purportedly brought pursuant to MCR 2.611, which governs motions for a new trial. We believe that rule is inapplicable, and that plaintiff's motion is in fact a motion for rehearing or reconsideration under MCR 2.119(F) and should be considered under that rule. Since Rule 2.119(F) does not provide for either a responsive brief or oral argument unless the court directs, we will not file any responsive brief unless requested by the court.

Very truly yours,

MILLER, JOHNSON, SNELL & CUMMISKEY, P.L.C.
By /s/ Jon G. March
Jon G. March
JGM:jy
cc: Mr. Gerald D. Bush

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OTTAWA

GERALD BUSH,
Plaintiff,

V

OPINION
File No. 93-11918-CK

MICHAEL Z. JONES, DR. KENNETH HARPER, ZEELAND PUBLIC SCHOOLS BOARD OF EDUCATION,
Defendants.

On December 9, 1993, this court issued a written opinion granting defendants' motion for summary disposition. This court held that plaintiff's claim was barred by the statute of limitations. On December 22, 1993, an order granting defendants' motion was filed without objection.

On January 21, 1994, plaintiff filed a motion titled "plaintiff's motion for rehearing/new trial." Because there has been no trial in this case, this court will treat plaintiff's motion as a motion for rehearing or reconsideration.

Motions for rehearing or reconsideration are governed by MCR 2.119(F). Pursuant to MCR 2.119(F)(l), " . . . a motion for rehearing or reconsideration of the decision on a motion must be served and filed not later than 14 days after entry of an order disposing of the motion." Plaintiff's motion was filed more than 14 days after entry of the order disposing of defendant's motion. Therefore, plaintiff's motion is untimely.

Plaintiff's motion is also without merit. The motion merely reiterates the same arguments that plaintiff made in response to defendants' motion for summary disposition. In Cason v Auto Owners Ins Co, 181 Mich App 600, 605; 450 NW2d 6 (1989), the court of appeals, citing MCR 2.119(F)(3), held that a motion for reconsideration that merely presents the same issues ruled on by the court,

either expressly or by reasonable implication, wlll not be granted. Plaintiff's motion merely presents the same issues tolling of the statute of limitations and defendants' alleged fraudulent concealment of material facts- that this courtruled on in the opinion of December 9, 1993.

Plaintiff's motion for "rehearing/new trial" is denied. An order shall be presented.

Dated: February 24,1994

/s/ Wesley J. Nykamp
Circuit Judge

ATTEST: A True Copy
(no signature)
Deputy County Clerk

EXAMINED, COUNTERSIGNED AND ENTERED BY ME
/S/ Daniel C. Kruger
County Clerk

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OTTAWA

FILE NO. 93-11918-CK (Incorrect number)
93-19118-CK (Correct)

GERALD BUSH
Plaintiff,

NOTICE OF OPINION

MICHAEL Z. JONES, DR. KENNETH HARPER,
ZEELAND PUBLIC SCHOOLS BOARD OF EDUCATION
Defendant.

Please take notice that on the 24th day of February 1994 an Opinion was filed in this cause.

TO:
Gerald Bush
Plaintiff/Attorney
724 East Central
Zeeland. MI 49464

Jon G. March. Leonard A. Kuvvenhoven
Defendant/Attorney
800 Calder Plaza Bldg.
Grand Rapids, MI 49503

I herby certify that copies of the Opinion were served upon the parties/attorneys of record in this cause on the 24th day of February, 1994 by ordinary mail.

DANIEL C. KRUEGER, OTTAWA COUNTY CLERK
By: (uninteligible)
Deputy Clerk of the Court
:jeg

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OTTAWA

GERALD BUSH,
Plaintiff,

File No. 93-19118-CK

V

HON. WESLEY J. NYKAMP

MICHAEL Z. JONES, DR. KENNETH HARPER, ZEELAND PUBLIC SCHOOLS BOARD OF EDUCATION,
Defendants.

GERALD D. BUSH
In Pro Per
724 E. Central
Zeeland, Michigan 49464
(616) 772-2398

FILED
March 22, 1994
Daniel C. Krueger
Ottawa County Clerk

JON G. MARCH (P17065)
LEONARD A. KUYVENHOVEN (P4
Miller, Johnson, Snell
& Cummiskey, P.L.C.
Attorneys for Defendants
800 Calder Plaza Building
Grand Rapids, Michigan 49503
(616) 459-8311

ORDER DENYING MOTION FOR REHEARING

At a session of said Court held in the City of Grand Haven, County of Ottawa, State of Michigan, on this 21st day of March, 1994.

PRESENT: HON. WESLEY J. NYKAMP
Circuit Court Judge

For the reasons set forth in the Court's written Opinion

dated February 24, 1994, Plaintiff's Motion for Rehearing/New Trial, which is in essence a motion for rehearinq, is denied.

/s/ Wesly Nykamp
Circuit Court Judge

Attest True Copy
OTTAWA COUNTY CLERK

ATTEST: A True Copy
Deputy County Clerk

EXAMINED, COUNTERSIGNED AND ENTERED BY ME
/S/ DANIEL C. KRUEGER
COUNTY CLERK

Court of Appeals, State of Michigan

ORDER

Martin M. Doctoroff
Presiding Judge
William B. Murphy
Maureen P. Reilly
Judges

Gerald Burns (sic) v Michael Jones
Docket # 174330
L. C. # 93-019118 CK

The Court, pursuant to MCR 7.216(A)(10), orders that the claim of appeal is DISMISSED for lack of jurisdiction because it was not timely filed. MCR 7.204(A)(l)(b).

A true copy entered and certified by Ella Williams, Chief Clerk, on August 8, 1994

/s/ Ella Williams
Chief Clcrk

State of Michigan
Court of Appeals
Lansing Office

ELLA WILLIAMS
CHIEF CLERK

Mr. Gerald Bush
724 East Central
Zeeland, MI 49464

September 13, 1994

Re: Gerald Bush v Michael Jones
Docket No. 174330
Ottawa County Circuit Court No. 93 019118 CK
Document Submitted: Motion for Rehearing

Dear Mr. Bush:

I am returning to you with this letter the motion for rehearing and check number 150, in the amount of $50.00, which you submitted in the above-captioned matter. Your motion was not received in this office within 21 days of the date this Court's decision was issued as required by MCR 7.215(H).

Once the rehearing period expired, this matter was no longer pending in this Court. The Judges of this Court have adopted a policy not to accept for filing any motion in a case unless the matter is still pending in thls Court.

Sincerely,
Ella Williams
Chief Clerk

/s/John P. Lowe
Assistant Clerk
EW:jrf
Enc.
cc: Craig A. Mutch

Order

Entered:
March 31, 1995

Michigan Supreme Court
Lansing, Michigan

James H. Brickley
Chief Justice
Charles L. Levin
Michael F. Cavanagh
Patricia J. Boyle
Dorothy Comstock Riley
Conrad L. Mallett, Jr.
Elizabeth A. Weaver
Justices

100958
SC: 100958
COA: 174330
LC: 93-019118-CK

GERALD BUSH,
Plaintiff-Appellant,
v
MICHAEL JONES, DR. KENNETH HARPER, and ZEELAND PUBLIC SCHOOLS,
Defendants-Appellees.

On order of the Court, the delayed application for leave to appeal and superintending control is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

90328

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

MARCH 31 1995 /S/JACULINE B. MAC KINNON
DEPUTY CLERK

Order

Entered: June 30, 1995
100958(25)

Michigan Supreme Court
Lansing, Michigan
James H. Brickley
Chief Justice
Charles L. Levin
Michael F. Cavanagh
Patricia J. Boyle
Dorothy Comstock Riley
Conrad L. Mallett, Jr.
Elizabeth A. Weaver
Justices

GERALD BUSH
Plaintiff-Appellant,
V

SC: 100958
COA: 174330
LC: 93-019118-CK

MICHAEL JONES, DR. KENNETH HARPER,
and ZEELAND PUBLIC SCHOOLS,
Defendants-Appellees.

On order of the Court, the motion for reconsideration of this Court's order of March 31, 1995 is considered, and it is DENIED, because it does not appear that the order was entered erroneously.

The Court has also considered renewed motions for superintending control filed by plaintiff-appellant, and they are DENIED.

80627

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

June 30 , 1995 /S/CORBIN R. DAVIS, CLERK

(2)

Supreme Court, U.S.
FILED
DEC 27 1995
CLERK

No. 95-843

In The

Supreme Court of the United States

October Term, 1995

GERALD D. BUSH,

Petitioner,

v.

MICHAEL Z. JONES, KENNETH HARPER, ZEELAND PUBLIC SCHOOLS,

Respondents.

Petition For A Writ Of Certiorari To The Michigan Court Of Appeals

RESPONDENTS' BRIEF IN OPPOSITION

CRAIG A. MUTCH (P27786)
Counsel of Record
MILLER, JOHNSON, SNELL & CUMMISKEY, P.L.C.
Attorneys for Respondents
800 Calder Plaza Building
Grand Rapids, MI 49503
(616) 459-8311

December 27, 1995

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

32 pp

QUESTIONS PRESENTED

I. Whether this Court should exercise its discretion to review the decisions of lower Michigan courts where there are no important questions of federal law and the state law issues have no national applicability or significance?

II. Whether this Court should exercise its discretion to review the decisions of lower Michigan courts where the state law issues were decided fairly and correctly by the lower Michigan courts in accord with applicable Michigan law?

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

TABLE OF AUTHORITIES iv

STATEMENT OF THE CASE 1

REASONS FOR DENYING THE WRIT 3

I. THIS COURT SHOULD NOT GRANT PETITIONER'S PETITION SIMPLY BECAUSE HE IS PROCEEDING PRO SE 3

II. THIS CASE INVOLVES ONLY ISSUES OF MICHIGAN LAW WHICH HAVE NO NATIONAL APPLICABILITY OR SIGNIFICANCE 4

III. PETITIONER WAS NOT DEPRIVED OF DUE PROCESS 4

IV. PETITIONER WAS NOT DENIED THE RIGHT TO A JURY TRIAL 5

V. THE LOWER MICHIGAN COURTS COMMITTED NO ERRORS IN DISMISSING PETITIONER'S COMPLAINT 6

A. The Court of Appeals' Order Dismissing Petitioner's Claim of Appeal Was Properly Decided 7

B. The Court of Appeals' Refusal to Consider Petitioner's Motion for Rehearing Was Proper 12

CONCLUSION 13

APPENDIX ..... App. 1

TABLE OF CONTENTS – Continued

Page

A. Proof of Service..... App. 1

B. Ottawa County Circuit Court Docket Sheet..... App. 3

C. Michigan Court of Appeals Docket Sheet..... App. 10

TABLE OF AUTHORITIES

Page

CASES

Biafore v. Baker, 119 Mich. App. 667, 326 N.W.2d 598 (1982) 10

Diamond Door Co. v. Lane-Stanton Lumber Co., 505 F.2d 1199 (9th Cir. 1974) 5

Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525 (1975) 3

Fidelity & Deposit Co. v. United States, 187 U.S. 315, 23 S.Ct. 120 (1902) 5

McKaskle v. Wiggins, 465 U.S. 168, 104 S.Ct. 944 (1984), *reh. den.*, 465 U.S. 1112, 104 S.Ct. 1620 (1984), *on remand*, 729 F.2d 1026 (5th Cir. 1984), *aff'd*, 753 F.2d 1318 (5th Cir. 1985) 3

O'Neil v. Northern Colorado Irrig. Co., 242 U.S. 20, 37 S.Ct. 7 (1916) 5

Ownbey v. Morgan, 256 U.S. 94, 41 S.Ct. 433 (1921) ...4, 5

STATUTES

Michigan Court Rule 2.107(C)(3) 10

Michigan Court Rule 2.107(G) 9, 10

Michigan Court Rule 2.602(A) 9

Michigan Court Rule 2.602(D) 1, 11

Michigan Court Rule 7.202(2) 12

Michigan Court Rule 7.202(3) 9

Michigan Court Rule 7.202(5) 12

Michigan Court Rule 7.204 7

TABLE OF AUTHORITIES – Continued

Page

Michigan Court Rule 7.204(A)(1) 9

Michigan Court Rule 7.204(A)(1)(a) 12

Michigan Court Rule 7.204(A)(1)(b) 8, 9, 12

Michigan Court Rule 7.215(H) 12

MISCELLANEOUS

Martin, Dean, Webster, *Michigan Court Rules Practice*, 135 12

STATEMENT OF THE CASE

Despite what one would gather from petitioner's statement of the case, the essential facts of this case are simple and largely undisputed. On or about August 25, 1993, petitioner filed a complaint and jury trial request in the Ottawa County Circuit Court ("Circuit Court") against respondents alleging breach of contract based on events which occurred in 1983 and 1984. Because petitioner's claims were clearly untimely and had previously been fully litigated, respondents moved for summary disposition based on the statute of limitations and the doctrines of *res judicata* and collateral estoppel. In a written opinion dated December 9, 1993, the Circuit Court granted respondents' motion for summary disposition on the basis of the statute of limitations (A at A1-3).[1] An Order Granting Defendants' Motion for Summary Disposition was filed with the Circuit Court on *December 22, 1993* (A at A4). Pursuant to MCR 2.602(D)[2], on December 28, 1993, counsel for respondents served a conformed

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[1] References to the Appendix to the Petition for Writ of Certiorari are designated as "(A at [letter/page #])." References to the Petition for Writ of Certiorari are designated as "P at [page #]."

[2] Rule 2.602(D) provides in pertinent part:

RULE 2.602 ENTRY OF JUDGMENTS AND ORDERS

* * *

(D) Service.

(1) The party securing the signing of the judgment or order shall serve a copy, within 7 days after it has been signed, on all other parties, and file proof of service with the court clerk.

* * *

copy of an Order Granting Defendants' Motion for Summary Disposition on Appellant (the Proof of Service filed by respondent is included as Appendix A).

On or about *January 21, 1994,* petitioner filed Plaintiff's Motion for Rehearing/New Trial with the Circuit Court (the Circuit Court docket sheet is included as Appendix B). In a written opinion dated February 24, 1994, the Circuit Court denied Petitioner's motion for the reasons that it was untimely and without merit (A at G1-2). An Order Denying Motion for Rehearing was filed with the Circuit Court on March 22, 1994 (the Circuit Court docket sheet is included as Appendix B).

On or about *April 11, 1994,* petitioner filed a Claim of Appeal with the Michigan Court of Appeals (the Michigan Court of Appeals docket sheet is included as Appendix C). In an Order dated *August 8, 1994,* the Court of Appeals, on its own motion, dismissed petitioner's Claim of Appeal for lack of jurisdiction because it was not timely filed (A at I1). Thereafter, petitioner attempted to file an untimely Motion for Rehearing with the Court of Appeals. In a letter dated September 13, 1994, the Court of Appeals returned to petitioner the Motion for Rehearing and his check because it had not been timely filed (A at J1).

The Michigan Supreme Court denied petitioner's Application for Delayed Leave to Appeal and Superintending Control on March 31, 1995 (A at K1) and denied reconsideration on June 30, 1995 (A at L1).

REASONS FOR DENYING THE WRIT

As shown below, petitioner has asserted no legitimate basis for this Court to exercise its extraordinary and discretionary jurisdiction.

I. THIS COURT SHOULD NOT GRANT PETITIONER'S PETITION SIMPLY BECAUSE HE IS PROCEEDING PRO SE.

Petitioner argues that this Court should grant his petition because "it clearly demonstrates the vast extent of the violations of the constitutional right to justice when one represents oneself" (P at 26). Petitioner attempts to support his argument by citing his lack of success in his pro se experiences (no judge has ruled in his favor in the six different cases before four different judges in which he has appeared pro se) (P at 28). Petitioner goes so far as to suggest (threaten) that pro se litigants (such as himself) who lose their cases are left with "a bitter taste of justice" which "sometimes erupt into Oklahoma bombings in protestation." (B at 28).

Despite petitioner's stated "firm belief" that "an unbiased judge who did not know he was proceeding *pro se*" would have ruled in his favor in every instance (P at 28), the reality is that he lost at the Circuit Court and Michigan Court of Appeals levels in this case because of his inability to comply with time requirements and procedural rules. Although there is a constitutional right to proceed *pro se*, that right does not also confer a license to ignore procedural rules or an exemption from substantive legal requirements. *Faretta v. California*, 422 U.S. 806, 834 n. 46, 95 S.Ct. 2525, 2541 n. 46 (1975); *McKaskle v. Wiggins*,

465 U.S. 168, 183-184, 104 S.Ct. 944, 954 (1984), *reh. den.*, 465 U.S. 1112, 104 S. Ct. 1620 (1984), *on remand*, 729 F.2d 1026 (5th Cir. 1984), *aff'd*, 753 F.2d 1318 (5th Cir. 1985). Petitioner is not entitled to receive any elevated status because he has chosen to represent himself before the Court.

II. THIS CASE INVOLVES ONLY ISSUES OF MICHIGAN LAW WHICH HAVE NO NATIONAL APPLICABILITY OR SIGNIFICANCE.

As shown below, this case turns entirely on principles of practice and procedure before the lower Michigan courts. There are no federal statutory or constitutional issues legitimately before this Court. The principles of Michigan law which are involved are unique to Michigan and have no national applicability or significance. There is simply no reason for this Court to invoke its extraordinary and discretionary jurisdiction.

III. PETITIONER WAS NOT DEPRIVED OF DUE PROCESS.

Petitioner argues that his due process rights were violated by the Michigan Court of Appeals by its dismissal of his appeals without hearings, arguments and decisions on the merits. Petitioner's argument is without merit.

Reasonable conditions may be imposed on the right to a hearing or to access to the courts generally. *Ownbey v. Morgan*, 256 U.S. 94, 111, 41 S.Ct. 433 (1921). Any right to a hearing or access to the courts may be lost by delay.

There is no denial of due process in a provision that, if a person affected takes no steps to assert his rights within a prescribed time period, the person loses those rights. *O'Neil v. Northern Colorado Irrig. Co.*, 242 U.S. 20, 26, 37 S.Ct. 7 (1916). That a rule of procedure may work particular hardship on a particular individual does not make the rule wanting in due process. *Ownbey, supra.*

In this case, petitioner failed to comply with the timelines and procedures that govern review of a decision by the lower courts in Michigan. As such, any right that petitioner may have had to such elements of due process as hearings, arguments and decisions on the merits, was lost by his own actions. Therefore, the due process rights of petitioner were not violated in this case.

IV. PETITIONER WAS NOT DENIED THE RIGHT TO A JURY TRIAL.

It has long been held that where summary judgment is properly granted, the losing party is not deprived of the right to a jury trial. *Fidelity & Deposit Co. v. United States*, 187 U.S. 315, 320, 23 S.Ct. 120 (1902). The general reasoning behind this holding is that summary judgment is granted as a matter of law where there is no genuine issue of material fact, and, therefore, the province of the jury, fact finding, is not invaded. *Diamond Door Co. v. Lane-Stanton Lumber Co.*, 505 F.2d 1199 (CA 9, 1974).

In this case, although petitioner requested a jury trial, his failure to file this action within the time permitted under the applicable statute of limitations resulted in

summary disposition being properly awarded to respondents by the Circuit Court. Therefore, petitioner was not denied his right to a jury trial.

V. THE MICHIGAN COURT OF APPEALS COMMITTED NO ERROR IN DENYING PETITIONER'S APPEALS.

Cutting through the 30 pages of verbiage that make up petitioner's Petition for a Writ of Certiorari, the sole issue raised by petitioner is whether he should be required to comply with the same timelines and procedures that govern an appeal to the Michigan Court of Appeals as everyone else. Although petitioner argues various perceived injustices and governmental abuse by the judges in the Michigan court system, the only injustice in this case would be if this Court decides to modify the Michigan Court Rules to accommodate petitioner's propensity for not timely filing his pleadings.

Review of the facts of this case clearly demonstrate that the Circuit Court was totally correct in granting respondent's motion for summary disposition on the basis of the statute of limitations. Thereafter, petitioner's failure to comply with the timelines and procedures that govern rehearing or reconsideration of that decision by the Circuit Court and appeal to the Michigan Court of Appeals properly terminated petitioner's right to review of the Circuit Court's decision. Finally, the Michigan Supreme Court correctly found no reason to review the Court of Appeals' decisions. As such, there is no legitimate basis for this Court to now review the Michigan courts.

In his Petition for Writ of Certiorari, petitioner prays that this Court "review the dismissal of Petitioner's appeal by right to the Michigan Court of Appeals and subsequent refusal to docket his Motion for Rehearing . . . " (P at 1). As shown below, the Michigan Court of Appeals' decisions were completely proper and fully in accord with Michigan law.

A. The Court of Appeals' Order Dismissing Petitioner's Claim of Appeal Was Properly Decided.

MCR 7.204 provides in pertinent part:

RULE 7.204 FILING APPEAL OF RIGHT; APPEARANCE

(A) Time Requirements. *The time limit for an appeal of right is jurisdictional.* The provisions of MCR 1.108 regarding computation of time apply.

(1) An appeal of right in a civil action must be taken within

(a) 21 days after entry of the judgment or order appealed from;

(b) *21 days after the entry of an order denying* a motion for new trial, *a motion for rehearing* or reconsideration, or a motion for other post-judgment relief, *if the motion was filed within the initial 21-day appeal period* or within further

> time the trial court may have allowed during that 21-day period; or
>
> * * *

(Emphasis supplied)

Analysis of MCR 7.204(A)(1)(b) reveals that the appeal of an order denying a motion for rehearing is allowed up to 21 days after the entry of the order *provided that the motion for rehearing was filed within the initial 21-day appeal period*. Otherwise, the Court of Appeals' jurisdiction is limited to appeals taken within 21 days after entry of the original judgment or order.

In this case, it is undisputed that on *December 22, 1993*, the Circuit Court entered an Order Granting Defendants' Motion for Summary Judgment. In order to delay the time limit for an appeal until 21 days after the entry of an order denying a motion for rehearing, MCR 7.204(A)(1)(b) requires that a motion for rehearing must be "filed within the initial 21 day appeal period." As such, in order for Plaintiff's Motion for Rehearing/New Trial to have been timely filed so as to delay the time limit for an appeal under MCR 7.204(A)(1)(b), it needed to be filed with the Circuit Court on or before *January 12, 1994*. For whatever reason, petitioner did not do so. Indeed, petitioner did not file his motion with the Circuit Court until *January 21, 1994*, some nine days after the 21-day deadline in MCR 7.204(A)(1)(b) had already expired.

In an attempt to circumvent his failure to timely file his Motion for Rehearing/New Trial, petitioner spends considerable time questioning the fact that the Circuit Court did not serve him with a Notice of the Signing of the Order Granting Defendants' Motion for Summary

Disposition until December 30, 1993. Utilizing that date as the *starting point* for the 21-day appeal period provided for in MCR 7.204(A)(1)(b), petitioner argues that the Motion for Rehearing/New Trial which he *mailed* on January 20, 1994, was timely. Petitioner's argument does not withstand scrutiny for several reasons.

First, the 21-day appeal period contained in MCR 7.204(A)(1) is computed based on the date of the entry of the order, not the date that a party receives notice of the entry of an order. MCR 2.602(A) provides that "the date of signing of an order or judgment is the date of entry." MCR 7.202(3) defines "entry" as "placing of an order, judgment or other document into the file and records of a lower court . . . by the clerk." In this case, it is undisputed that the Order Granting Defendants' Motion for Summary Disposition was signed and placed in the files of the Circuit Court on *December 22, 1993*. Therefore, in order for petitioner to have filed his Motion for Rehearing/New Trial within the initial 21-day appeal period permitted under MCR 7.204(A)(1)(b), it had to be filed with the Circuit Court on or before *January 12, 1993*.

Second, although petitioner may have mailed his Motion for Rehearing/New Trial to the Ottawa County Circuit Court on January 20, 1994, it was not filed with the Court until *January 21, 1994*. "Filing with the court" is defined by MCR 2.107(G), and that subrule clearly indicates that, until the pleadings or papers are in the hands of the court clerk, no "filing" has occurred.[3] Thus, even if

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[3] In his petition, petitioner argues that "there is no law or precedent, or even court rule . . . that prohibits a timely mailed

the starting date for the 21-day period is assumed to be December 30, 1993 (and, as shown above, it is not), petitioner still failed to timely file his Motion for Rehearing/ New Trial, since the deadline date for filing under that scenario would have been January 20, 1994.[4]

---

filing from being considered timely filed" (P at 16). Petitioner then cites MCR 2.107(C)(3) which deals with service of papers as "worthy consideration." In making that argument, petitioner confuses "service" of papers with the "filing" of pleadings. MCR 2.107(G) clearly requires that a paper or document be delivered to and *received* by a proper court officer to constitute being "filed." *Biafore v. Baker*, 119 Mich App 667, 326 N.W.2d 598 (1982).

[4] Petitioner's fixation on the December 30, 1993 date when the Circuit Court Clerk served him with a Notice of Signing of the Order Granting Defendants' Motion for Summary Disposition is completely misdirected. After all, petitioner knew since the Circuit Court issued its written opinion on December 9, 1993 that respondents' motion for summary disposition had been granted (A at A4). Thereafter, on December 13, 1993, respondents served petitioner with a Notice of Submission to the Circuit Court of a proposed order under MCR 2.602(B)(3), which provides in pertinent part:

RULE 2.602 ENTRY OF JUDGMENTS AND ORDERS

* * *

(B) Procedure of Entry of Judgments and Orders. An order or judgment shall be entered by one of the following methods:

* * *

(3) Within 7 days after the granting of the judgment or order, or later if the court allows, a party may serve a copy of the proposed judgment or order on the other parties, with a notice to them that it will be submitted to the court for signing if no written objections are filed with the court clerk within 7 days after

Third, pursuant to MCR 2.602(D), the responsibility for serving a copy of a judgment or order is on the party securing the signing of the judgment or order, *not the court*. As required by MCR 2.602(D), on December 28, 1993, counsel for respondents served a conformed copy of an Order Granting Defendants' Motion for Summary Disposition on petitioner. Therefore, since it is uncontested that counsel for respondents served a copy of the signed Order on petitioner within seven (7) days after it had been signed, everything was done properly in this case. Hence, the date from which petitioner needed to file his Motion for Rehearing/New Trial related back to December 22, 1993, the date the Circuit Court entered the Order Granting Defendant's Motion for Summary Judgment.

The conclusion which must be reached from these facts is that petitioner failed to file his Motion for Rehearing/New Trial with the Circuit Court within the 21-day

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> service of the notice. The party must file with the court clerk the original of the proposed judgment or order and proof of its service on the other parties.
>
> (a) If no written objections are filed within 7 days, the clerk shall submit the judgment or order to the court, and the court shall then sign it if, in the court's determination, it comports with the court's decision.
>
> * * *

Petitioner opted not to file any objections to the proposed order within the seven-day time period that is allowed. Accordingly, the Court signed the proposed order on December 22, 1993, and a copy of the signed order was served on petitioner on December 28, 1993.

appeal period required by MCR 7.204(A)(1)(b), and thus the time limits in that provision are not applicable for petitioner's claim of appeal. Accordingly, pursuant to MCR 7.204(A)(1)(a), in order for petitioner's claim of appeal to be timely, it needed to be filed with the Court of Appeals on or before *January 12, 1994*. For whatever reason, petitioner failed to do so. In fact, petitioner did not file his claim of appeal with the Court of Appeals until *April 11, 1994*, nearly three months after the deadline had already expired. Therefore, the Court of Appeals' Order dismissing this case for lack of jurisdiction because it was not timely filed was properly entered.

B. The Court Of Appeals' Refusal To Consider Petitioner's Motion For Rehearing Was Proper.

MCR 7.215(H) provides that "to move for rehearing, a party must *file* a motion within 21 days after the date stamped on an opinion or after the date the clerk certified an order." MCR 7.202(5) defines "filing" as "the *delivery* of a document to a court clerk and the *acceptance* of the document by the clerk with the intent to enter it into the record of the court." MCR 7.202(2) defines "date of filing" as "the date of *receipt* of a document by a court clerk."

Despite petitioner's argument in his Petition to the contrary, it has long been recognized under the court rules that documents mailed are not considered filed until actually received and reviewed by the court clerk. As observed in the Author's Comment to MCR 7.202 in Martin, Dean, Webster, *Michigan Court Rules Practice*, 135:

> *The astute reader will note that documents mailed to the clerk's office are not considered filed until actually received and* reviewed by the clerk. One may also note that there is no rule requirement which states that the clerk must review documents mailed to that office immediately upon receipt or even the same day of receipt. Until the clerk has an opportunity to check documents and papers to insure that they conform to the rules, are complete, and to insure that all required fees have been paid, those documents and papers are not "filed" with the court. *For that reason, most appellate practitioners will deliver important papers to the clerk's office, the use of the mails reserved for those instances in which time is plentiful.*

(Emphasis supplied).

In this case, petitioner sought rehearing by the Court of Appeals of its Order dismissing his Claim of Appeal entered on *August 8, 1994*. As such, in order for petitioner's Motion for Rehearing to be timely, he needed to *file* it with the Court of Appeals on or before *August 29, 1994*. For whatever reason, petitioner failed to do so. Petitioner's Motion for Rehearing was not *filed* with the Court of Appeals until *August 30, 1994*. Therefore the Court of Appeals' refusal to consider petitioner's Motion for Rehearing because it was not timely filed was proper.

CONCLUSION

On each occasion at issue in this matter, petitioner has failed to timely file the necessary pleadings to secure review of a decision with the appropriate lower court. As a consequence, the courts have properly dismissed his

untimely requests for review on the basis that they lack jurisdiction. Rather than modifying his behavior to comply with the well-established procedures applicable to everyone else, petitioner requests that this Court ignore the Michigan Court Rules so that his dilatory conduct will be allowed.

The timeliness and procedural issues in this case involve only issues of Michigan law and do not place federal, statutory or constitutional issues legitimately before this Court. Nor are the decisions of the Michigan courts erroneous.

For all of the reasons set forth above, petitioner's Petition for Writ of Certiorari should be denied.

MILLER, JOHNSON, SNELL & CUMMISKEY, P.L.C.
Attorneys for Respondents Michael Z. Jones, Kenneth Harper and Zeeland Public Schools

CRAIG A. MUTCH (P27786)
Counsel of Record

Business Address:
800 Calder Plaza Building
Grand Rapids, MI 49503
(616) 459-8311

Dated: December 27, 1995.

APPENDIX A

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE
COUNTY OF OTTAWA

GERALD BUSH,

Plaintiff,

v

MICHAEL Z. JONES, DR. KENNETH HARPER, ZEELAND PUBLIC SCHOOLS BOARD OF EDUCATION,

DEFENDANTS.

File No. 93-19118-CK

HON. WESLEY J. NYKAMP

---/

GERALD D. BUSH
In Pro Per
724 E. Central
Zeeland, Michigan 49464
(616) 772-2398

JON G. MARCH (P17065)
LEONARD A. KUYVENHOVEN (P45392)
Miller, Johnson, Snell & Cummiskey
Attorneys for Defendants
800 Calder Plaza Building
Grand Rapids, Michigan 49503
(616) 459-8311

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss.
COUNTY OF KENT)

Judy A. York, being duly sworn, deposes and states that she is secretary to Jon G. March of Miller, Johnson, Snell & Cummiskey, attorneys for defendants in the above-captioned lawsuit, and that on the 28th day of December, 1993 she served a conformed copy of an Order Granting Defendants' Motion for Summary Disposition upon the following:

Gerald D. Bush
724 E. Central
Zeeland, Michigan 49464

Service was made via regular first-class U.S. mail.

/s/ Judy A. York
Judy A. York

Subscribed and sworn to before me
this 28th day of December, 1993.

/s/ Carol Ambrose
Notary Public, Kenty County, MI
My commission expires: 3/5/94

APPENDIX B

DATE: 5/03/94 STATE OF MICHIGAN, CIRCUIT COURT, COUNTY OF OTTAWA PAGE 1

GERALD BUSH VS MICHAEL JONES

CASE: 93-019118-CK

JUDGE: WESLEY J. NYKAMP

ACTIVE: 8/25/93
CLOSED: 12/22/93

JURY
BOX:

PLAINTIFF
BUSH, GERALD
724 E CENTRAL
ZEELAND, MI 49464

ATTORNEY
IN, PRO PER,

, 00000

DEFENDANT
JONES, MICHAEL Z
9063 LAKEVIEW CT
ZEELAND, MI 49464

ATTORNEY
MARCH, JON G,
800 CALDER PLAZA BLDG
GRAND RAPIDS, MI 49503

FEES

RECEIPT	PAID	RECEIVED FROM	TYPE	AMOUNT WAIVED
68350	8/25/93	BUSH, GERALD	FILING FEE	$42.00
68351	8/25/93	BUSH, GERALD	JURY FEE	$20.00
			TRIAL BY JURY	$10.00

70073	10/20/93	MILLER, JOHNSON,	MOTION	$20.00
73064	1/25/94	BUSH, GERALD	MOTION	$20.00
941221	4/11/94	BUSH, GERALD	APPEAL FEE-CT OF APP	$25.00
			SERVICE	$
			ATTORNEY	$
			COSTS	$
			OTHER	$
			DAMAGES	$
			INTEREST	$
			TOTAL	$

DATE	CODE	ACTIONS, JUDGMENTS, CASE NOTES	JD CLK
8/25/93	C	CASE FILED WITH CIRCUIT COURT	C3 BL
	–	COMPLAINT, JURY TRIAL DEMAND	C3 BL
8/25/93	SI	SUMMO ISSUED	C3 BL
	–	EXPIRES NOV 24, 1993	C3 BL
8/25/93	JD	JURY DEMAND FILED	C3 BL
	*	PROOF OF SERVICE	C3 BL
9/17/93	*	APPEARANCE	C3 SAN
	AN	ANSWER FILED	C3 SAN
	–	ANSWER AND AFFIRMATIVE AND OTHER DEFENSES	C3 SAN
9/17/93	*	PROOF OF SERVICE	C3 SAN

10/04/93	CPO	CASE PREPARATION ORDER	C3 FMH
10/15/93	APR	HEARING SCHEDULED FOR 11/22/93 AT 2:30 PM	C3 JAC
	–	DEFENDANT'S MOTION RE SUMMARY DISPOSITION	C3 JAC
10/18/93	DM	DEFENSE MOTION	C3 SAN
	–	DEFENDANTS' MOTION FOR SUMMARY DISPOSITION	C3 SAN
10/18/93	*	AFFIDAVIT OF JON G. MARCH IN SUPPORT OF MOTION FOR	C3 SAN
	–	SUMMARY DISPOSITION	C3 SAN
10/18/93	*	NOTICE OF HEARING 11-22-93 2:30	C3 SAN
	*	PROOF OF SERVICE	C3 SAN
10/19/93	APR	CASE PREPARATIONS SCHEDULED FOR 11/24/93 AT 1:15 PM	C2 MK
	*	NOTICE OF CASE PREPARATION (2)	C3 SAN
11/16/93	*	PROOF OF SERVICE	C3 SAN
	*	AFFIDAVIT OF GERALD D. BUSH IN OPPOSITION TO DEFENDANTS	C3 SAN
	–	MOTION FOR SUMMARY DISPOSITION AND IN SUPPORT OF SUMMARY	C3 SAN
	–	DISPOSITION FOR PLAINTIFF	C3 SAN
11/19/93	*	PROOF OF SERVICE	C3 CG
	SC	PROOF OF SERVICE ON COMPLAINT	C3 CG

	–	SUMMONS RETURNED W/AFFIDAVIT OF PROCESS SERVER-CERTIFIED	C3 CG
	–	MAIL-MICHAEL JONES 8/26/93-COPY OF RECEIPT SIGNED BY	C3 CG
	–	ERIN JONES	C3 CG
11/19/93	SC	PROOF OF SERVICE ON COMPLAINT	C3 CG
	–	SUMMONS RETURNED W/AFFIDAVIT OF PROCESS SERVER-CERTIFIED	C3 CG
	–	MAIL-DR.KENNETH HARPER 8/26/93-COPY OF RECEIPT SIGNED BY	C3 CG
	–	K. J. HARPER	C3 CG
11/19/93	SC	PROOF OF SERVICE ON COMPLAINT	C3 CG
	–	SUMMONS RETURNED W/AFFIDAVIT OF PROCESS SERVER-CERTIFIED	C3 CG
	–	MAIL-ZEELAND PUBLIC SCHOOLS 8/27/93-COPY OF RECEIPT	C3 CG
	–	SIGNATURE UNREADABLE	C3 CG
11/22/93	H	HEARING HELD	C3 FMH
	–	HRD MOT FOR SUM DISPOSITION, UNDER ADVISEMENT	C3 FMH
12/09/93	*	NOTICE OF OPINION	C3 FMH
12/13/93	NS	NOTICE OF SUBMISSION UNDER MCR 2.602(b)(3)	C3 SAN
	–	NOTICE OF FILING OF PROPOSED ORDER	C3 SAN

12/13/93	*	PROOF OF SERVICE	C3 SAN
12/22/93	FDD	FINAL DISPOSITION- DISMISSAL	C3 SAN
	–	ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY	C1 SAN
	–	DISPOSITION	C1 SAN
12/29/93	*	PROOF OF SERVICE	C3 SAN
12/30/93	*	NOTICE TO ATTORNEYS OF RECORD	C3 SAN
1/21/94	PM	PLAINTIFF MOTION	C3 SAN
	–	PLAINTIFF'S MOTION FOR REHEARING/ NEW TRIAL	C3 SAN
1/21/94	*	PROOF OF SERVICE	C3 SAN
2/24/94	*	NOTICE OF OPINION	C3 FMH
3/01/94	NS	NOTICE OF SUBMISSION UNDER MCR 2.602(B)(3)	C3 SAN
	–	NOTICE OF FILING OF PROPOSED ORDER	C3 SAN
3/01/94	*	PROOF OF SERVICE	C3 SAN
3/08/94	*	PROOF OF SERVICE	C3 SAN
3/22/94	*	ORDER DENYING MOTION FOR REHEARING	C3 SAN
3/31/94	*	PROOF OF SERVICE	C3 SAN
4/11/94	CA	COURT OF APPEALS FILE	C3 SAN
	–	CLAIM OF APPEAL	C3 SAN
		*** END OF EVENTS ***	

DATE: 5/03/94 STATE OF MICHIGAN, CIRCUIT COURT, COUNTY OF OTTAWA PAGE 3

GERALD BUSH VS MICHAEL JONES

CASE: 93-019118-CK

JUDGE:
WESLEY J. NYKAMP

PLAINTIFF	ATTORNEY
BUSH, GERALD 724 E CENTRAL ZEELAND, MI 49464	IN,PRO PER, , 00000
DEFENDANT	ATTORNEY
JONES, MICHAEL Z 9063 LAKEVIEW CT ZEELAND, MI 49464	MARCH, JON G, 800 CALDER PLAZA BLDG GRAND RAPIDS, MI 49503
HARPER, KENNETH DR 155 S CENTENNIAL STREET ZEELAND, MI 49464	MARCH, JON G, 800 CALDER PLAZA BLDG GRAND RAPIDS, MI 49503
ZEELAND PUBLIC SCHOOLS BOARD O 183 W ROOSEVELT ZEELAND, MI 49464	MARCH, JON G, 800 CALDER PLAZA BLDG GRAND RAPIDS, MI 49503
JONES, MICHAEL Z. (ADDRESS UNKNOWN)	KUYVENHOVEN, LEONARD A, 800 CALDER PLAZA BLDG GRAND RAPIDS, MI 49503

HARPER, DR. KENNETH (ADDRESS UNKNOWN)	KUYVENHOVEN, LEONARD A, 800 CALDER PLAZA BLDG GRAND RAPIDS, MI 49503
ZEELAND PUBLIC SCHOOLS BOARD O (ADDRESS UNKNOWN)	KUYVENHOVEN, LEONARD A, 800 CALDER PLAZA BLDG GRAND RAPIDS, MI 49503

*** END OF CASE ***

APPENDIX C

CASE: 174330-L STATUS: CLOSE LIST: 90 T:16:37:27 D:09/27/94

GERALD BUSH V MICHAEL JONES

MAIL RUN FROM G 9/13/94 267 REPLY BRF MOT RHRG
MAIL RUN FROM G 9/07/94 169 ANSWER MOT REHRG
MAIL RUN FROM G 8/30/94 12 MO REHRG & $50 (#150)
REMARKS: DOCOM; RELATED 170293; 138192

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001 BUSH GERALD	PL-AT		PRO	724 EAST CENTRAL ZEELAND MI 49464-
002 JONES MICHAEL Z	DF-AE	(27786)	RET	MUTCH CRAIG A 800 CALDER PLAZA BLDG GRAND RAPIDS MI 49503- [616] 459/8311
			***	NOT FOR WBM
003 HARPER KENNETH DR	DF-AE		SAM	
004 ZEELAND SCHOOL BOARD	DF-AE		SAM	

---------- TOPICS/ISSUES ----------

NATURE:SUMMJ; FOR DF

4/11/94	01	CLAIM OF APPEAL	D CLARK	6/02/94
		P/S: 41194 FEE:0200 CHK: 122		
		CLERK:JPL RCT MAIL: 6/03/94		
12/22/93	02	ORDER APPEALED FROM: OTTAWA COUNTY BLACK		4/15/94
		JUDGE: NYKAMP WESLEY J LCT 93019118 CK		
		SUMMJ FOR DF		
4/11/94	05	ATTY CERT OF TRANSCRIPT REQST	ALLEN	6/30/94
		DATE: 41194 R- 242 TAYLOR JILL L		
5/13/94	09	DOCKETING STATEMENT-MCR 7.204H	SENN	7/20/94
		TR DAYS: 1 SETL:N FUT:N	PTY: 1 ATY:	
		TOP:SUMMJ CTRAC EMPLY LIMIT		
		**DEFECTIVE:PROOF;		
6/28/94	08	APPEARANCE ATTY FOR DF	ALLEN	7/11/94
			PTY:02 P-27786 MUTCH CRA	
7/11/94	10	NOTICE OF FILING TRANSCRIPT	SENN	7/20/94
		DATE: 70894 R- 242 TAYLOR JILL L		
7/12/94	07	SUBMTD ON SPECIAL MOTN DOCKET	ALLEN	7/11/94
		N1: 6 LANS PAN:MMD WBM MPR ITEM: 6		
		DISMISS ON CT'S OWN MTN		

8/08/94	11	ORDER DISMISS-CLERK'S PROPOSAL N1: 6 MCR 7.216(A)(10)	ALLEN PAN:MMD,WBM,MPR	8/08/94
9/13/94	12	CORRESPONDENCE RETURNED TO PTY BUSH-MTN REH CK 150 $50; RECEIVED TOO LATE	FISCHER	9/13/94

174330 DOCKET/FILE LISTING COMPLETE, THANK YOU AKERMAN [G6]